



# Manual

Title Guaranty Division  
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[www.IowaFinanceAuthority.gov/titleguaranty](http://www.IowaFinanceAuthority.gov/titleguaranty)

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## Article I: Background and Purpose

The Iowa Legislature created the Title Guaranty Division (hereinafter referred to as the “Division”) in 1985 to provide additional guarantees of Iowa real property titles, to facilitate mortgage lenders’ participation in the secondary market, and to add to the integrity of the land-title transfer system. It became operational on January 1, 1987. The Division is totally self-supporting, and all revenue over and above operating expenses funds home ownership programs for first-time homebuyers in Iowa. Since its inception, the Division has increased services to our customers and has made periodic updates to the Title Guaranty Manual (formerly known as the Attorney Manual, hereinafter referred to as the “Manual”) on an as-needed basis.

The primary purposes of the Manual are to explain the proper use of forms adopted by the Division and to set out Division underwriting standards, procedures, and requirements for residential transactions. “Residential property” is defined for the Division in 265 IAC 9.3 as:

*...real estate consisting of single-family housing or multifamily housing of no more than six units.*

Note that this definition does not include mixed property uses, for example, land being used for a residence along with other uses, such as farm, storage of crops, animal husbandry, barbershop, etc.

The Manual provides guidance to Participants and Independent Closers in determining whether sufficient documentation exists to allow Title Guaranty Commitments and Certificates (hereinafter referred to as “Commitments” and “Certificates”) to be issued to cover particular risks and whether coverage should be expanded through the issuance of one or more Endorsements. Procedures for the issuance of Commitments and Certificates are covered in Article IV, “Division Forms.” Endorsements are explained further in Article V, “Endorsements.”

Also, the most common title problems and the Division requirements in dealing with these problems are addressed in Article VII, “Underwriting.” This Article is not intended to be an exhaustive treatment of all possible problems that might affect title to Iowa real estate, nor is it intended to include all of the potential title defects within the subject matter covered. The analysis provided is conservative. However, it may be possible to treat defects found more liberally, depending upon all of the facts and circumstances surrounding the transaction. The Division encourages Participants and Independent Closers to contact the Underwriting Department regarding possible alternatives when the procedures contained herein are overly burdensome, if not impossible, under the circumstances.

Familiarity with the material in this Manual is a must for attorneys and abstractors using the Title Guaranty Program (hereinafter referred to as the “Program”), either directly (by issuing Commitments, Certificates, and Endorsements) or indirectly (by preparing abstracts and title opinions). In addition, lenders, real estate agents, Participant paralegal and administrative staff, and Independent Closers are urged to read this Manual in order to better understand the Division process. While the Division encourages non-Participants to become better acquainted with the material in this Manual, the Division does not intend that this Manual be used as a substitute for attorney examination and judgment in guaranteeing title.

## ***Section 1.01 Administration***

Day-to-day administration of the Program is coordinated by the Division staff located at Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312.

For assistance in completing forms, computing premiums, or underwriting questions, please contact the Division at 515-725-HELP (4357), or toll-free at 800-432-7230 between 8:00 a.m. and 4:30 p.m. Monday through Friday.

Commitments may be faxed to 515-725-4931 or e-mailed to [TGDCCommitments@Iowa.gov](mailto:TGDCommitments@Iowa.gov). Certificate Applications for the Division should be mailed to Title Guaranty, 2015 Grand Ave., Des Moines, IA 50312.

Certificates issued by Field Issuers whose work is being examined by Division auditors can be sent to the Division's audit e-mail at [TGAudit@Iowa.gov](mailto:TGAudit@Iowa.gov).

General information, forms, and documents are available on the Division Web site at [www.IowaFinanceAuthority.gov/titleguaranty](http://www.IowaFinanceAuthority.gov/titleguaranty). Also available at the site are Pricing, Updates/Events, and Internet Applications for issuing Field Issuers trained in that process.

## ***Section 1.02 Organization of the Title Guaranty Division***

The Division is a division within the Iowa Finance Authority (hereinafter referred to as “IFA”), which is governed by Chapter 16 of the Iowa Code. The powers of the Division are vested in and exercised by a Division Board of five members appointed by the Governor, subject to confirmation by the Senate. Pursuant to statute, the membership of the Division Board consists of an attorney, an abstractor, a real estate broker, a representative of a mortgage-lender, and a representative of the housing development industry. The Director of the Division is an attorney appointed by the Executive Director of the IFA pursuant to statute, and serves as an ex-officio member of the Division Board.

The IFA Board interrelates with the Division Board, and the IFA Board has certain responsibilities under the statute. The IFA Board acts in a limited capacity as a reviewing or approving body in certain situations that are set out in the statute.

The Division offers Commitments and Certificates; approves the terms, conditions, and form of the guaranty contracts; fixes the charge for the guaranty; approves the amount of liability coverage required for Participants and Independent Closers; becomes subrogated to the rights of claimants; and is the recipient of all documents and notices in connection with the Program. Commitments and Certificates which have been issued under the Program are obligations of the Division only and are not general State obligations.

### ***Section 1.03 Abstractors and Title Guaranty***

A Participating Attorney's title opinion must be based on a certified abstract prepared by a Title Guaranty Participating Abstractor. Abstractors are required to complete an Abstractor Participation Agreement and agree therein to maintain professional liability insurance of not less than \$250,000.00 total annual limit. In addition, Participating Abstractors are required to pay an annual \$25.00 participation fee and submit annual questionnaires to the Division verifying their qualifications.

Participating Abstractors are required to act in accordance with Iowa Land Title Association Abstracting Standards as set out in the "Blue Book" of the Iowa Land Title Association, *Iowa Abstracting Standards*, and the short form abstract for the "Non-Purchase Product" presented in Article VIII, "Procedures and Requirements for New Title Guaranty Programs."

#### **Abstractor Processing**

Pursuant to 265 IAC 9, the Division may contract with Participating Abstractors to prepare and issue Commitments, Certificates, Endorsements, and other forms for the Division using the Division's Internet-based software system, Certificate Application Processing (hereinafter referred to as "CAP"). The Division allows Participating Abstractors who are "Processing Abstractors" to both create and submit Commitments, Certificates, and Endorsements to the Division through CAP. "Processing Abstractors" use this time- and money-saving tool to facilitate their participation in the Division process. CAP substantially reduces the time spent on data entry and offers automation of several standard repetitive processes that will accomplish more in less time. It further reduces the initial entry process for all Field Issuers by automatically inserting data into the appropriate fields. Refer to the CAP Users Manual for more details about CAP.

To qualify as a processor of Commitments, Certificates, and Endorsements, an abstractor must meet the following requirements:

- Applicant must be a Participating Abstractor in good standing with the Division.
- Applicant shall constantly keep in force errors and omissions insurance in the amount of \$500,000.00 per claim and a total aggregate annual limit of \$500,000.00. The policy shall be endorsed to include "Title Guaranty Division" as a certificate holder. The Division must be immediately notified by the insurance carrier of any lapse in or termination of coverage.
- Applicant shall cooperate to the extent practical with the Division to conduct credit checks and background checks as deemed necessary.
- Applicant must attend one or more Division training sessions, as required by the Division.

#### **Abstractor Processing Limitations**

A Participating Abstractor authorized to process Commitments, Certificates, and Endorsements on behalf of the Division shall obtain the prior written authorization of the Division's legal staff prior to issuing the following:

- Commitment or Certificate for a construction loan or a loan paying off new construction funds.

- Non-residential Commitment, Certificate, or Endorsement.
- Commitment, Certificate, or Endorsement with coverage exceeding \$500,000.00.

If authorization required under these limitations is not obtained through the act or omission of the Participating Abstractor, the Participating Abstractor shall be strictly liable to the Division for any loss or damage resulting from issuance of Commitments, Certificates, Endorsements, and other documents.

## **Abstractor Processing Responsibilities**

The Participating Abstractor processing the Commitments, Certificates, and Endorsements has responsibilities to the Division, including, but not limited to:

- Confirm the attorney and abstractor are “Participants” in the Program.
- Confirm with the Participating Attorney who prepared the title opinion that any objections in the opinion have been waived or satisfied.
- Make sure lien searches have been performed on the appropriate parties.
- Verify public access to and from the land. If the property does not abut a public road or an access easement providing access is not covered by the abstract and title opinion, raise the “access exception” on Schedule B of the Commitment and Certificate.
- Include recording data for all recorded documents, including the date and book and page/document number.
- Review all documents for accuracy.
- Assure the required parties (all titleholders and spouses, properly indicating marital status, i.e., single or husband and wife) have signed the mortgage, and if not, immediately notify the Division. In that instance, do not issue a Certificate without approval from the Division.
- Review the appraisal, Real Property Inspection Report, survey, and other available information to assure current date, consistency of legal description (not more or less), address, and status of any new construction.
- Secure required information from lender and/or owner concerning new improvements, encroachments, boundary line disputes, and parties in possession.
- Respond promptly to requests for additional information from the Division.
- Apply Division standards and procedures and comply with all Division requirements when processing Commitments, Certificates, or Endorsements.
- Maintain a permanent record of Commitments, Certificates, and Endorsements issued and supporting documentation for Division audits. Pursuant to 265 IAC 9.6(3)“h,” abstractors shall maintain title files for 10 years after the effective date of the Certificate(s).

This is not an exhaustive list, and “Processing Abstractors” are bound by the provisions relating to the Division found in Iowa Code Chapter 16 (2007); 265 Iowa Administrative Code Chapter 9; the Abstractor Participation Agreement; this Manual; and other procedures, guides, directives, or any other written or oral instructions or requirements given by the Division.

## ***Section 1.04 Independent Closers and Title Guaranty***

“Independent Closer” means a person or entity, other than a participating attorney or participating abstractor, conducting real estate closings and authorized to close transactions under protection of closing protection letters from the Division.

### **Independent Closer Processing**

The Division may contract with Independent Closers to prepare and issue Commitments, Certificates, Endorsements, and other forms for the Division using the Division’s Internet-based software system, Certificate Application Processing (hereinafter referred to as “CAP”). The Division allows Independent Closers who are “Field Issuers” to both create and submit Commitments, Certificates, and Endorsements to the Division through CAP. “Independent Closers” use this time- and money-saving tool to facilitate their participation in the Division process. CAP substantially reduces the time spent on data entry and offers automation of several standard repetitive processes that will accomplish more in less time. It further reduces the initial entry process for all Participants by automatically inserting data into the appropriate fields. Refer to the CAP Users Manual for more details about CAP.

To qualify as a processor of Commitments, Certificates, and Endorsements, Independent Closers must meet the following requirements:

### **Independent Closers Processing Limitations**

An Independent Closer authorized to process Commitments, Certificates, and Endorsements on behalf of the Division shall obtain the prior written authorization of the Division’s legal staff prior to issuing the following:

- Commitment or Certificate for a construction loan or a loan paying off new construction funds.
- Non-residential Commitment, Certificate, or Endorsement.
- Commitment, Certificate, or Endorsement with coverage exceeding \$500,000.00.

If authorization required under these limitations is not obtained through the act or omission of the Independent Closer, the Independent Closer shall be strictly liable to the Division for any loss or damage resulting from issuance of Commitments, Certificates, Endorsements, and other documents.

### **Independent Closers Processing Responsibilities**

The Independent Closer processing the Commitments, Certificates, and Endorsements has responsibilities to the Division, including, but not limited to:

- Confirm the attorney and abstractor are “Participants” in the Program.
- Confirm with the Participating Attorney who prepared the title opinion that any objections in the opinion have been waived or satisfied.
- Make sure lien searches have been performed on the appropriate parties.
- Verify public access to and from the land. If the property does not abut a public road or an access easement providing access is not covered by the abstract and title opinion, raise the “access exception” on Schedule B of the Commitment and Certificate.

- Include recording data for all recorded documents, including the date and book and page/document number.
- Review all documents for accuracy.
- Assure the required parties (all titleholders and spouses, properly indicating marital status, i.e., single or husband and wife) have signed the mortgage, and if not, immediately notify the Division. In that instance, do not issue a Certificate without approval from the Division.
- Review the appraisal, Real Property Inspection Report, survey, and other available information to assure current date, consistency of legal description (not more or less), address, and status of any new construction.
- Secure required information from lender and/or owner concerning new improvements, encroachments, boundary line disputes, and parties in possession.
- Respond promptly to requests for additional information from the Division.
- Apply Division standards and procedures and comply with all Division requirements when processing Commitments, Certificates, or Endorsements.
- Maintain a permanent record of Commitments, Certificates, and Endorsements issued and supporting documentation for Division audits. Independent Closers shall maintain title files for 10 years after the effective date of the Certificate(s).
- Division Closers must maintain detailed records of the parties who are present at each closing, and specify where and when each closing is held.

This is not an exhaustive list, and “Independent Closers” are bound by the provisions relating to the Division found in Iowa Code Chapter 16 (2007); 265 Iowa Administrative Code Chapter 9; the Independent Closers Agreement; this Manual; and other procedures, guides, directives, or any other written or oral instructions or requirements given by the Division.

## ***Section 1.05 Attorneys and Title Guaranty***

The attorney rendering a title opinion for purposes of issuing Commitments, Certificates, and Endorsements must be a Participant in the Program. This can be accomplished by completing an Attorney Participation Agreement which includes agreeing to maintain professional liability insurance with limits of not less than \$200,000.00 per claim and not less than \$500,000.00 total annual limit. Participating Attorneys are also required to submit an annual questionnaire verifying their qualifications to the Division along with an annual \$25.00 participation fee. The attorney's procedure in examining a title is the same whether or not a Certificate is issued. The attorney examines the abstract in accordance with the established Iowa title standards and will render a professional opinion concerning the title.

The Division allows select Participating Attorneys to issue Commitments, Certificates, Endorsements, and other forms. The "Issuing Attorney" can either issue documents for the Division through paper, or through an Internet-based software system, Certificate Application Processing (hereinafter referred to as "CAP").

The Division allows Participating Attorneys to both create and submit Commitments, Certificates, and Endorsements to the Division through CAP. "Web Issuing Attorneys" use this time- and money-saving tool to facilitate their participation in the Division process. CAP utilizes portions of the custom in-house application in order to increase the underwriting capabilities of the Web Issuing Attorney's office. This substantially reduces the time spent on data entry by the Participating Attorney. It also offers automation of several standard repetitive processes that will accomplish more in less time. It further reduces the initial entry process for all Participants by automatically inserting data into the appropriate fields. Refer to the CAP Users Manual for more details about CAP.

### **Attorney Responsibilities**

Depending on the Participating Attorney's role in the transaction and coverage to be provided in the Commitment, Certificate, or Endorsements, the Participating Attorney may have responsibilities to the Division in addition to examination of the abstract, including:

- Confirm the abstract is complete according to the Marketable Title Act, the Iowa Land Title Standards, and the Division procedures set forth at Article II, "Information and Documents Required for Division Issuance," Article III, "Title Guaranty Documents," Article VII, "Underwriting," and Article VIII, "Procedures and Requirements for New Title Guaranty Programs."
- Make sure lien searches have been performed on the appropriate parties.
- Report on right of access to and from the land.
- Include recording data for all recorded documents, including the date and book and page/document number.
- Review all documents for accuracy.
- Assure all required parties (all titleholders and spouses, properly indicating marital status, i.e., single or husband and wife) have signed the mortgage, and if not, immediately notify the Division. In that instance, do not issue a Certificate without approval from the Division.

- Review the appraisal, Real Property Inspection Report, survey, and other available information to assure current date, consistency of legal description (not more or less), address, and status of any new construction.
- Secure required information from lender and/or owner concerning new improvements, encroachments, boundary line disputes, and parties in possession.
- Provide all information required by the Division to issue Commitments, Certificates, and Endorsements.
- Respond promptly to requests for additional information from the Division.
- Apply Division underwriting standards and procedures and comply with all Division requirements when representing the Division or a Guaranteed or when Commitments, Certificates, and Endorsements are issued.
- Maintain a permanent record of Commitments, Certificates, and Endorsements issued and supporting documentation for Division audits. Pursuant to 265 IAC 9.6(2)“g,” attorneys shall maintain title files and the title portion of client files 10 years after the effective date of the Certificate(s).

This is not an exhaustive list, and Participating Attorneys are bound by the provisions relating to the Division found in Iowa Code Chapter 16 (2007); 265 Iowa Administrative Code Chapter 9; the Attorney Participation Agreement; this Manual; and other procedures, guides, directives, or any other written or oral instructions or requirements given by the Division.

### ***Section 1.06 Conflicts of Interest***

A Participating Attorney, Participating Abstractor, or Independent Closer shall not issue or cause to be issued a Division Commitment or Certificate nor close a transaction in which they have a direct or indirect interest unless the Division provides written approval to do so.

If they issue or cause to be issued a Division Commitment or Certificate or close on land in which they have a direct or indirect interest without first obtaining the approval of the Division shall, in addition to other rights and remedies of the Division, be liable to the Division for any loss or damage suffered by the Division under the Commitment, Closing Protection Letter, Certificate, or Endorsements. In addition, the Division shall not be liable under the Commitment or Certificate to the Participating Attorney, Participating Abstractor, or Independent Closer or anyone who succeeds to their interest in the land, including but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors. An “indirect interest” for purposes of this discussion includes, but is not limited to, an interest held by the Participating Attorney, Participating Abstractor, or Independent Closer in a trust, estate, partnership, or corporation, and any interest held by their spouse, children, grandchildren, or parents in the land or in a trust, estate, partnership, or corporation. These requirements shall not apply to interests held by the Participating Attorney, Participating Abstractor, or Independent Closer or his or her spouse, children, grandchildren, or parents in a representative capacity or in a publicly held corporation.

### ***Section 1.07 Claims***

Notification of a claim must be made by the Guaranteed to the Division in accordance with the Conditions of the Certificate. Claims are handled in accordance with the procedures set out in the Iowa Administrative Code.

### ***Section 1.08 Audits***

Audits will be performed in accordance with the procedures set out in the Iowa Administrative Code.

## **Article II: Information and Documents Required for Division Issuance**

This section provides an overview of the information and documents needed for the Division to issue Commitments and Certificates.

## ***Section 2.01 Division-Issued Requirements***

### **Certificate Issuance**

1. Application for Title Guaranty (fully completed). Refer to the Application for Title Guaranty in this Manual at section 2.02.
2. Participating Attorney's signed preliminary title opinion.
  - a. Required information found in a preliminary title opinion:
    - i) Date and time of the last abstract certification. If the attorney is examining Form 900 on a "Non-Purchase Product," this must be disclosed in the title opinion. The "Non-Purchase Product" is described further in Article VIII, "Procedures and Requirements for New Title Guaranty Programs." The effective date of the Commitment may be extended up to six months by obtaining a supplemental attorney opinion based upon the Pre-Closing Search Certification (Division Form: PCS) that is also used for the Gap Endorsement further described in section 5.15 of this Manual.
    - ii) Name of abstract company or abstractor (must be a Participating Abstractor).
    - iii) Name(s) of titleholder(s) and how they hold title (exactly as the same appears on the deed or other muniment of title as shown in the abstract).
    - iv) Mortgage information, which must include the date of the mortgage, the filing date of the mortgage, book/page or instrument/document number, the mortgage amount, the name(s) of the borrower(s) and marital status as shown on the mortgage (if husband and wife, must so state and must be signed in full by both), and the name of the mortgage lender. If the mortgage was assigned, the information provided also must include the date, filing date, book/page or instrument/document number of the assignment, and the name of the lender taking the assignment.
    - v) Tax status of each installment, i.e., paid, unpaid, delinquent, or not yet due.
    - vi) Filing and other information for all recorded instruments, including all mortgages, easements, restrictions, building setbacks, and all other matters to which the property is subject, and judgments against the owner(s) or a statement that there are no such matters.
3. Participating Attorney's signed final title opinion.
  - a. Required information found in a final title opinion:
    - i) Date and time of the last abstract certification. If the attorney is examining a post-closing search certification or the Form 901 on a "Non-Purchase Product," this must be disclosed in the title opinion. The post-closing certification is described further in Article IV, "Division Forms." The "Non-Purchase Product" is described further in Article VIII, "Procedures and Requirements for New Title Guaranty Programs."
    - ii) Name of abstract company or abstractor (must be a Participating Abstractor).
    - iii) Name(s) of titleholder(s) and how they hold title (exactly as the same appears on the deed or other muniment of title as shown in the abstract).
    - iv) Mortgage information, which must include the date of the mortgage, the filing date of the mortgage, book/page or instrument/document number, the mortgage amount, the name(s) of the borrower(s) and marital status as shown on the mortgage (if husband and wife, must so state and be signed in full by both), and the name of the mortgage lender. If the mortgage was assigned, the information provided also must include the date, filing date, book/page or instrument/document number of the assignment, and the name of the lender taking the assignment.
    - v) Tax status of each installment, i.e., paid, unpaid, delinquent, or not yet due.
    - vi) Filing and other information for all recorded instruments, including all mortgages, easements, restrictions, building setbacks, and all other matters to which the property

- is subject, and judgments against owner(s) or a statement that there are no such matters.
4. All information required by paragraphs 2 and 3 above and shown on the Model Title Opinions at section 7.10, Article VII, “Underwriting,” or copies of the filed documents, must be received by the Division so that all necessary information is available in order to prepare the Certificate and Endorsements (i.e., filed copy of mortgage showing spouse’s signature, filed copy of assignment, etc.).
  5. Appraiser’s Report or Drawing:
    - a. Although the Division strongly suggests that an appraisal be obtained on all transactions, it is not required for most residential transactions. If the requested lender coverage is \$500,000.00 or less and the property covered by the guaranteed mortgage is less than 40 acres, no appraisal is required. Note that a mixed use property would not qualify and a survey would be required, i.e., property that is both residential and agricultural. An appraisal that would disclose a residence located at a specified address on the property covered may be needed if a Location Endorsement is required by the proposed guaranteed. Or current information from the assessor’s office in the county where the property is located could provide the same location information in lieu of an appraisal for the issuance of a Location Endorsement.
    - b. If the requested lender coverage exceeds \$500,000.00, and/or the residential property covered by the guaranteed mortgage is 40 acres or more, a current drawing (often referred to as a Real Property Inspection Report or Mortgage Survey) of the legal description showing dimensions, property lines, all improvements, building setback lines, easements, and encroachments must be sent with the Application for Title Guaranty. In most cases, if there is a prior Certificate on the property, the Division will accept the Division’s Affidavit of No New Improvements (refer to section 4.11, Article IV, “Division Forms”) showing no new improvements have occurred on the property or adjacent properties since the last drawing was done.
  6. Composite Mortgage Affidavit (hereinafter referred to as “CMA”), fully completed and executed by all owners, buyers, and sellers. Refer to the CMA forms included in this Manual at section 4.10, Article IV, “Division Forms.”
  7. Premium Check made payable to “Treasurer State of Iowa” in the proper amount. Refer to Article VI, “Rates,” for premium calculations.
  8. Other Supporting Documents:
    - a. If this transaction is a construction loan or if improvements have been made to the premises within the past 90 days before closing, the following must be provided to the Division:
      - i) A final appraisal or a preliminary appraisal with the appraiser’s attached Satisfactory Completion Certificate (or other satisfactory evidence of the date upon which all construction was completed).
      - ii) Either a mechanics’ lien claim search of the clerk of court’s records, in the county where the property is located, dated at least 90 days after the date upon which all construction was completed disclosing no mechanics’ liens of record, or copies of all lien waivers executed by all general contractors, subcontractors, and materialmen. An affidavit for the mechanics’ lien claim search is shown in section 4.12, Article IV, “Division Forms.”
    - b. Other relevant documents may include copies of restrictive covenants, assignments not shown on the final title opinion, or documents correcting information shown on the final title opinion.
  9. Commercial and non-routine residential transactions have different requirements than stated above. Contact the Division for information.

## **Commitment Issuance**

If the lender requires a Commitment, the Division requires a fully completed Application for Title Guaranty and a preliminary title opinion, as required in paragraphs 1 and 2 above, prepared by a Participating Attorney so that the Commitment may be issued. The Application and the preliminary title opinion may be sent one of two ways:

1. Facsimile these documents to the Division at the Division's Commitment fax number, 515-725-4931.
2. E-mail these documents to the Division at the Division's Commitment e-mail address, [TGDCCommitments@Iowa.gov](mailto:TGDCommitments@Iowa.gov).

After closing, when the abstract/search has been updated, and a final title opinion, as required in paragraph 3 above, for the preliminary title opinion, has been completed, provide the final title opinion and all other required or requested documents listed in Schedule B, Paragraph II, Section 2 of the Commitment, to the Division.

## ***Section 2.02 Use of the Application for Title Guaranty***

When the Division is requested to issue a Commitment or Certificate, the submission is always accompanied by the Application for Title Guaranty. A properly completed Application for Title Guaranty provides the Division with information regarding the property and the transaction so that a Commitment and/or Certificate may be processed, appraises the Division of the applicant's contact information in case the Division has questions or needs further documentation, and directs the Division where to deliver the Commitment and/or Certificate.



## Application for Title Guaranty

Date: \_\_\_\_\_  
Request for: Commitment \_\_\_\_\_ Certificate \_\_\_\_\_

### 1. Property Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### 2. Type of Property:

Residential \_\_\_\_\_ Bare Land \_\_\_\_\_  
Commercial, Industrial, Agricultural \_\_\_\_\_

### 3. Other Information (check only those that apply):

Cash Transaction	_____	Construction Loan	_____
Installment Contract	_____	End Loan	_____
Refinance/Form 900	_____	Rental Property	_____
Refinance/Abstracting	_____	Mortgage (Other)	_____

### 4. Buyer(s) / Borrower(s):

\_\_\_\_\_  
\_\_\_\_\_

### 5. Seller(s):

\_\_\_\_\_  
\_\_\_\_\_

### 6. Coverage and Amount:

Lender 1st Mortgage \$ \_\_\_\_\_  
Lender 2nd Mortgage \$ \_\_\_\_\_  
Owner's Coverage \$ \_\_\_\_\_  
(Purchase Price) \$ \_\_\_\_\_

### 7. Lender- Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Guaranteed - Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Eligible for Free Owner's? Yes \_\_\_\_\_ No \_\_\_\_\_

### 8. Lender Endorsements

	1st	2nd
a) Comprehensive 1	_____	_____
b) Condo (ALTA 4.0)	_____	_____
c) EPA-Environmental (ALTA 8.1)	_____	_____
d) Gap	_____	_____
e) Location (ALTA 22.0)	_____	_____
f) Manufactured Home (ALTA 7.0)	_____	_____
g) PUD (ALTA 5.0)	_____	_____
h) Variable Rate (ALTA 6.0)	_____	_____
i) Other	_____	_____

### 9. Documents to Attach:

a) Premium Check	_____
(Payable to Title Guaranty)	_____
b) Final Title Opinion	_____
c) Preliminary Title Opinion	_____
d) Composite Mortgage Affidavit	_____
e) Appraisal (if applicable)	_____
f) RPIR, Survey, Assessor Information	_____
(only if applicable)	_____
g) Other (please specify)	_____

### 10. Contact for further information:

Name: \_\_\_\_\_  
Company: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_  
Fax: \_\_\_\_\_

### 11. Deliver Commitment/Certificate to:

\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Deliver Owner Certificate to:  
Address Above \_\_\_\_\_ Owner \_\_\_\_\_

### 12. Bill to - Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Mail Certificate Applications to:

Title Guaranty Processing Center  
2015 Grand Avenue  
Des Moines, IA 50312

Title Guaranty Division  
2015 Grand Avenue, Des Moines, IA 50312  
Help Desk: 515.725.HELP(4357) • Email: TGDCommitments@iowa.gov • Fax: 515.725.4901

## **Article III: Title Guaranty Documents**

The basic documents of the Program are the Commitment, the Owner Certificate, and the Lender Certificate. These documents are based on the American Land Title Association (hereinafter referred to as “ALTA”) forms. From the inception of the Program, the Division has utilized the 1970 (Revised 10/17/70) ALTA commitment and policy forms. As of April 1, 2007, the Division has adopted the 6/17/2006 ALTA commitment and policy forms.

In addition, numerous Endorsements may be used to modify or expand standard coverage provided in the Certificates. Many of these forms are based on ALTA-approved endorsement forms.

Use of the ALTA forms enhances the acceptability of the Iowa Title Guaranty documents in the secondary mortgage market.

If using the “Non-Purchase Product,” the “Rapid Certificate,” or the “Closing Protection Letter” procedures, additional forms are required as stated in Article VIII, “Procedures and Requirements of New Title Guaranty Programs.”

Each of the Title Guaranty documents has the same basic format and consists of several parts as follows:

- A jacket that contains the coverage provided, conditions, and exclusions from coverage.
- A declarations section (Schedule A) that identifies the Guaranteed, indicates the effective date and time of the coverage, identifies the titleholder(s), describes the mortgage information (Lender Certificate only), and describes the property covered.
- An exceptions section (Schedule B) that lists the exceptions to the coverage provided.
- Endorsements that expand or modify coverage.

### ***Section 3.01 Overview of Commitment***

The Commitment provides a proposed Guaranteed with written assurance that a Certificate will be issued at a later date, subject to satisfaction of the requirements set forth in the Commitment. The Commitment expires six months from the effective date shown on the Commitment. There is only one form of Commitment. It shows whether an Owner Certificate, Lender Certificate (First Loan), or Lender Certificate (Junior Loan) will be issued, or a combination of all three Certificates will be issued.

If a Commitment is requested, the initial step in the issuance of a Certificate is the issuance of that Commitment. This is done following the examination of a certified abstract of title, prepared by a Participating Abstractor, and the preparation of a preliminary title opinion by a Participating Attorney. Model forms of a preliminary title opinion and final title opinion, as approved by the Division Board, are set out in section 7.10, Article VII, "Underwriting." Generally, the preliminary title opinion sets forth the status of title to the property as it exists prior to the contemplated transaction. For Division purposes, the preliminary title opinion shall identify the record titleholder, all mortgages, judgments, liens, encumbrances, easements, restrictions, covenants, taxes, and other matters affecting title. All the information necessary for preparation of a Commitment, including all filing information of the documents described above, shall be found in the preliminary title opinion, or on copies of the filed documents submitted to the Division. The Commitment is prepared on the basis of the preliminary title opinion and the copies of the filed documents. Participating Attorneys who are issuing agents may issue a Commitment as the preliminary attorney title opinion in compliance with the Division procedures in effect at the time of issue. Without prior written Division approval to the contrary, the same Participating Abstractor, Participating Attorney, authorized Independent Closer, or Division employee who issued the Commitment must be the one to issue the final Certificate(s).

The Commitment reports to the proposed Guaranteed the current status of title and enumerates those matters which must be accomplished or corrected before the Certificate is issued. The Commitment provides that the Certificate(s) to be issued will be "...subject to the provisions of Schedules A and B and to the Conditions of this Commitment." By reference, the Commitment incorporates the Exclusions, as well as the guaranteeing provisions and Conditions of the Certificate(s) to be issued at a later date.

Schedule A of the Commitment identifies the proposed Guaranteed, the titleholder, the effective date, the amount and type of coverage, and the legal description of the property.

Schedule B includes all matters which will be exceptions to the title. Schedule B includes the "Five Standard Exceptions" (refer to the first five exceptions disclosed in Schedule B of the Commitment form) and other exceptions such as gap, payment of consideration, taxes, all mortgages, judgments, liens, encumbrances, easements, restrictions, covenants, and other items that affect title. Schedule B of the Commitment also sets forth the "requirements" to be complied with by the proposed Guaranteed before a Certificate will be issued. The Division or Field Issuer will list all actions which must be taken and instruments which must be properly executed, including, but not limited to, those which must be filed of record, as a condition precedent to issuance of the Certificate. These may include a deed or mortgage, appropriate releases, easements, affidavits, or other items.

Although issuance of a Commitment may be the first step in the process, the Commitment is not a prerequisite to issuance of a Certificate, unless the amount of coverage is over \$500,000.00, a Division Closing Protection Letter is requested by the proposed Guaranteed, and/or the property is non-residential. A Certificate may be issued when the record title is found to be marketable and reflects the ownership or lien rights contemplated by the owner or mortgagee. Normally, that situation will not arise until a transaction has been completed and all necessary documentation has been duly recorded.

### ***Section 3.02 Overview of Owner Certificate***

The Owner Certificate provides protection to the owner (buyer) of the property against the following risks:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to coverage against loss from:
  - a. A defect in the Title caused by:
    - i) forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation;
    - ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized or delivered;
    - iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - v) a document executed under a falsified, expired or otherwise invalid power of attorney;
    - vi) a document not properly filed, recorded or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - vii) a defective judicial or administrative proceeding.
  - b. The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - c. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term “encroachment” includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to:
  - a. the occupancy, use or enjoyment of the Land;
  - b. the character, dimensions or location of any improvement erected on the Land;
  - c. the subdivision of land; or
  - d. environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective:

- a. as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - b. because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - i) to be timely, or
    - ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Certificate and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Exclusions section of the Owner Certificate excludes (unless the risk is included above) from coverage certain items including, but not limited to, the following:

1. The effect of laws, ordinances, or governmental regulations restricting use of the property, or the effect of any violation thereof, and the effect of governmental police powers.
2. Rights of eminent domain.
3. Defects of title, liens, etc. "created, suffered, assumed or agreed to..." by the Guaranteed and not known to the Division.
4. Creditor's rights laws affecting the current transaction based on a fraudulent conveyance or a preferential transfer.

As in the Commitment, Schedule A must be completed to provide information identifying the Guaranteed, the effective date of coverage (the "Date of Certificate"), the amount and type of coverage, titleholder(s), and the legal description of the property.

Again, Schedule B is similar to Schedule B of the Commitment, and sets forth the exceptions to coverage under the Certificate, and consists of two separate parts: "Five Standard Exceptions" and all other exceptions. The "Five Standard Exceptions" are:

1. *Rights or claims of parties in possession not shown by the Public Records.*
2. *Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.*
3. *Easements, or claims of easements, not shown by the Public Records.*
4. *Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.*
5. *Taxes or special assessments which are not shown as existing liens by the Public Records.*

The other exceptions part of Schedule B always reflects the lien of future taxes payable, and all mortgages, judgments, liens, encumbrances, easements, restrictions, covenants, taxes, and other matters affecting the title to the property.

The information to complete Schedules A and B are obtained from the Participating Attorney's final title opinion prepared after closing. Participating Attorneys who are issuing agents for the Division may issue an Owner Certificate as the final attorney title opinion in compliance with Division procedures in effect at the time of issue. If the Division Closing Protection Letter was

issued, refer to Article VIII, "Procedures and Requirements for New Title Guaranty Programs," for the proper procedure to be followed.

The Conditions of the Owner Certificate are found on the jacket. Coverage under the Owner Certificate continues so long as the Guaranteed holds an interest in the property or owns an indebtedness secured by the property, or so long as the Guaranteed has liability for covenants of warranty under a deed of the premises.

In the past, successors only by operation of law were included in the coverage. The definition of the Guaranteed in the 2006 Owner Certificate has been expanded to include the following:

1. Successors to the Guaranteed by dissolution, merger, consolidation, distribution, or reorganization.
2. Successors to the Guaranteed by way of conversion to any different form of entity.
3. Certain voluntary conveyances by the named Guaranteed, such as:
  - a. Where the equity interests of the grantee are wholly owned by the Guaranteed.
  - b. Where the grantee wholly owns the Guaranteed.
  - c. Where the grantee is wholly owned by an "affiliate" of the Guaranteed and that affiliate and the Guaranteed share a common "parent."
  - d. Where the grantee is the trustee or beneficiary of a trust established by the Guaranteed for estate planning purposes.

The Division will defend the Guaranteed in the event of a claim; however, the Division is subrogated to the rights of the Guaranteed against other persons who have liability for a claimed loss. This includes the Participating Abstractor who prepared the abstract of title and the Participating Attorney who examined it.

### ***Section 3.03 Overview of Lender Certificate***

The Lender Certificate includes many of the same provisions as the Owner Certificate. However, the coverage under the Lender Certificate is much broader. In addition to the 10 risks covered in the Owner Certificate, the Lender Certificate also guarantees against:

1. The invalidity or unenforceability of the lien of the Guaranteed Mortgage upon the Title. This Covered Risk includes but is not limited to coverage against loss from any of the following impairing the lien of the Guaranteed Mortgage:
  - a. forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation;
  - b. failure of any person or Entity to have authorized a transfer or conveyance;
  - c. the Guaranteed Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized or delivered;
  - d. failure to perform those acts necessary to create a document by electronic means authorized by law;
  - e. a document executed under a falsified, expired or otherwise invalid power of attorney;
  - f. a document not properly filed, recorded or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
  - g. a defective judicial or administrative proceeding.
2. The lack of priority of the lien of the Guaranteed Mortgage upon the Title over any other lien or encumbrance.
3. The lack of priority of the lien of the Guaranteed Mortgage upon the Title:
  - a. as security for each and every advance of proceeds of the loan secured by the Guaranteed Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either:
    - i) contracted for or commenced on or before Date of Certificate; or
    - ii) contracted for, commenced, or continued after Date of Certificate if the construction is financed, in whole or in part, by proceeds of the loan secured by the Guaranteed Mortgage that the Guaranteed has advanced or is obligated on Date of Certificate to advance; and
  - b. over the lien of any assessments for street improvements under construction or completed at Date of Certificate.
4. The invalidity or unenforceability of any assignment of the Guaranteed Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Guaranteed Mortgage in the named Guaranteed assignee free and clear of all liens.

The Exclusions found in the Lender Certificate are similar to those included in the Owner Certificate with an additional exclusion, as follows:

*Unenforceability of the lien of the Guaranteed Mortgage because of the inability or failure of a Guaranteed to comply with applicable doing business laws of the state where the Land is situated.*

As in the Commitment and Owner Schedule A, Schedule A of the Lender Certificate must be completed to provide information identifying the Guaranteed, the effective date of coverage (the "Date of Certificate"), the amount and type of coverage, titleholder(s), the legal description of the property, and, in addition, must contain required information about the guaranteed mortgage.

Schedule B of the Lender Certificate does not contain the “Five Standard Exceptions,” which substantially broadens the scope of coverage. Therefore, if coverage for the “Five Standard Exceptions” is not requested or if the requirements to delete the “Five Standard Exceptions” are not complied with, they must be added back in as exceptions in Schedule B.

The exceptions in Schedule B in the Lender Certificate consist of two Parts: Part I and Part II. Part I always includes an exception for the lien of future taxes payable. It also reflects other exceptions, such as all mortgages (except the guaranteed mortgage, which is identified as such on Schedule A and is not an exception to coverage), judgments, liens, encumbrances, easements, restrictions, covenants, and other matters affecting the title to the property. Part II includes all exceptions that are subordinate to the lien of the guaranteed mortgage, otherwise known as “junior liens or encumbrances.”

The information to complete Schedules A and B are obtained from the Participating Attorney’s final title opinion prepared after closing. Participating Attorneys who are issuing agents for the Division may issue a Lender Certificate as the final attorney title opinion in compliance with Division procedures in effect at the time of issue. If the Division Closing Protection Letter was issued, refer to Article VIII, “Procedures and Requirements for New Title Guaranty Programs,” for the proper procedure to be followed;

The Conditions of the Lender Certificate are found on the jacket and contain a broader definition of “Guaranteed” that, in addition to the named “Guaranteed,” includes:

1. The owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary (except an obligor) and
2. The party who has “control” of a “transferable record” as defined by applicable electronic transaction law.

In addition, coverage is continued as to a Guaranteed (mortgagee) who acquires title by foreclosure of a mortgage.

### ***Section 3.04 Endorsements***

In addition to the Certificates, a number of Endorsements are available for modifying (usually expanding) the coverage under a Certificate. The use of each Endorsement requires compliance with underwriting standards, procedures, and requirements. These are discussed more fully in Article VII, “Underwriting.” Each Endorsement form cross-references the Certificate which it amends.

All the approved residential Endorsements are included along with instructions in Article V, “Endorsements and Instructions to Issue.”

## Article IV: Division Forms

The following forms have been developed for use in issuing Certificates. The importance of accuracy in the completion of the forms cannot be overstated. Most transactions will not require use of all forms presented. Should a particular transaction require an additional form not presented here, please contact the Division.

In determining whether a Certificate should be issued for a particular property and what limitations/conditions it should contain, the *Iowa Land Title Standards* published by the Iowa State Bar Association; the generally accepted rules of practice for determining the marketability of titles; and Division underwriting standards, procedures, and requirements shall govern. Field Issuers should familiarize themselves with the Title Examination Standards and resources used in examining Iowa titles and Division underwriting standards, procedures, and requirements.

A complete and thorough knowledge and understanding of the Commitment and Certificate coverage, exclusions, and exceptions are essential prior to the issuance of Commitments, Certificates, and Endorsements, both to explain the provisions contained therein, as well as to assure proper application of Division underwriting standards, procedures, and requirements.

The forms in this Manual are shown for illustrative purposes only and may vary slightly from the official forms. Always use the official forms available from the Division or on CAP.

The procedure for completing the forms may be found at [www.IowaFinanceAuthority.gov/titleguaranty](http://www.IowaFinanceAuthority.gov/titleguaranty). Click “Internet Applications,” which will let you select the “CAP Users Guide” and “Certificate Application Processing” (CAP). Field Issuers should contact the Division for a User Name and Password to allow entry into the CAP.

## ***Section 4.01 Commitment Jacket***

Serial No. C-1000553



## Commitment for Title Guaranty

(Same coverage as American Land Title Association Standard Policy 6-17-2006)

The Title Guaranty Division of the Iowa Finance Authority, herein called the Division, for a valuable consideration, commits to issue its Title Guaranty Certificate or Certificates as identified in Schedule A, in favor of the Proposed Guaranteed named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.

The Commitment shall be effective only when the identity of the Proposed Guaranteed and the Amount of Coverage committed for have been inserted in Schedule A by the Division or by a Division Participant.

All liability and obligation under this Commitment shall cease and terminate six (6) months after the Effective Date or when the Certificate or Certificates committed for shall issue, whichever first occurs, provided that failure to issue the Certificate or Certificates is not the fault of the Division.

The Division will provide a sample of the Certificate upon request.

IN WITNESS WHEREOF, the Title Guaranty Division, has caused this Commitment to be signed and sealed in its name by its duly authorized officer, by direction of its Board, to become binding when countersigned by its Director, or by a Division Participant.



Title Guaranty Division

By

*Lloyd W. Ogle*

Lloyd W. Ogle, Director

Division Form 100  
(2006)

COMMITMENT NO.: C-1000553

DATE REVISED: June 25, 2007 at 08:48:38 AM

NOTE: This revision does not extend the effective date of the commitment unless specified.

### Conditions

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Guaranteed has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest of mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Division in writing, the Division shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Division is prejudiced by failure to so disclose such knowledge. If the proposed Guaranteed shall disclose such knowledge to the Division, or if the Division otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Division at its option may amend Schedule B of the Commitment accordingly, but such amendment shall not relieve the Division from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Division under this Commitment shall be only to the named Proposed Guaranteed and such parties included under the definition of Guaranteed in the form of Certificate or Certificates committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the Certificate or Certificates committed for and such liability is subject to the guaranteeing provisions and Conditions and the Exclusions from Coverage of the form of Certificate or Certificates committed for in favor of the Proposed Guaranteed which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more Title Guaranty Certificates and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Guaranteed may have or may bring against the Division arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.

### Title Guaranty

A Division of the Iowa Finance Authority

800-432-7230

2015 Grand Avenue

Des Moines, Iowa 50312

[www.IowaFinanceAuthority.gov](http://www.IowaFinanceAuthority.gov)

COMMITMENT NO.: C-1000553

DATE REVISED: June 25, 2007 at 08:48:38 AM

NOTE: This revision does not extend the effective date of the commitment unless specified.

## ***Section 4.02 Commitment Schedule A***



## Commitment Form Schedule A

Commitment Number: C-1000553

Borrower(s)/Buyers(s), For Reference Purposes Only: John J. Title and Kris M. Title

Address, For Reference Purposes Only: 8304 Winston Avenue, Urbandale, IA

Effective Date: June 01, 2007 at 08:00:00 PM

<u>1. Certificate or Certificates to be issued</u>	<u>Proposed Coverage Amount</u>	<u>File Number</u>	<u>Loan Number</u>
(a) <u>Owner Certificate</u>	\$220,000.00		
(b) <u>Lender Certificate</u>	\$200,000.00		

Proposed Guaranteed:

Bank of the West its successors and/or assigns, Johnston, IA

(c) <u>Lender Certificate</u>	\$20,000.00
-------------------------------	-------------

Proposed Guaranteed:

Bank of the West its successors and/or assigns, Johnston, IA

2. The estate or interest in the Land described or referred to in this Commitment is a fee simple (if other, specify same).

Fee Simple

3. Title to the estate or interest in said Land is at the Effective Date hereof vested in:

Joe Titleholder and Jane Titleholder

Note: The Division does not purport to guarantee whether the above parties hold title as joint tenants with full rights of survivorship and not as tenants in common or as tenants in common.

4. The Land referred to in this Commitment is described as follows:

Lot 26 in Northwest Country Club Manor, Plat 4, an Official Plat, now included in and forming a part of the City of Urbandale, Polk County, Iowa.

Prepared By John Test  
Typed Name

Test Law Firm  
Member Name  
200 E. Grand Ave., Suite 350  
(Mailing Address)

Signature of Member  
Des Moines, IA 50309  
(City, State) (Zip)

COMMITMENT NO.: C-1000553

DATE REVISED: June 25, 2007 at 08:48:38 AM

NOTE: This revision does not extend the effective date of the commitment unless specified.

### ***Section 4.03 Commitment Schedule B***



## Commitment Form Schedule B

Commitment Number: C-1000553

I. Schedule B of the Certificate or Certificates to be issued will contain the following five Standard Exceptions and other matters listed below as exceptions 6, etc., unless the same are disposed of to the satisfaction of the Division:

1. Any right or claim of a party in possession not shown by the Public Records.
2. Notwithstanding the guaranteeing clauses of this Guaranty, the Division does not guarantee against any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land.
3. Any easement or claim of easement, not shown by the Public Records.
4. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Notwithstanding the guaranteeing clauses of this Guaranty, the Division does not guarantee against taxes or special assessments which are not shown as existing liens by the Public Records.
6. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Effective Date but prior to the date the Proposed Guaranteed acquires for value of record the estate or interest or Mortgage thereon covered by this Commitment.
7. Payment of the full consideration to, or for the account of, the grantors or mortgagors.
8. The lien of the taxes for the July 1, 2006 - June 30, 2007 fiscal year and thereafter, with the first half due on September 1, 2007 (delinquent after September 30, 2007) and the second half due on March 1, 2008 (delinquent after March 31, 2008). None now due and payable.
9. Mortgages, restrictions, easements or any other lien or encumbrance on or defect in the Title to the property as follows:
  - a) Mortgage in favor of Central State Bank dated April 1, 2005, filed April 4, 2005 in Book 23400, at Page 55, to secure an indebtedness of \$34,000.00
  - b) Mortgage in favor of U.S. Bank, N.A. dated April 1, 2005, filed April 4, 2005 in Book 23400, at Page 89, to secure an indebtedness of \$11,000.00.
  - c) Ordinances and regulations for the City of Urbandale and County of Polk, Iowa.
  - d) Plat(s) filed in the Polk County, Iowa, Recorder's Office, including easements, building setbacks, restrictions, reservations, and notations.

COMMITMENT NO.: C-1000553

DATE REVISED: June 25, 2007 at 09:02:34 AM

NOTE: This revision does not extend the effective date of the commitment unless specified.

e) Declarations, covenants, restrictions, easements, reservations, rights, and options filed of record in the Polk County, Iowa, Recorder's Office.

f) Utility Easement in favor of MidAmerican Energy filed July 1, 2002 in Book 22490, at Page 245.

g) Restrictive Covenants filed February 5, 2000 in Book 12000, at Page 234, and as amended from time to time.

II. The following are the requirements to be complied with:

1. Instruments in form suitable for guaranty which must be executed, delivered, and duly filed for record:

a) Warranty Deed from Joe Titleholder and Jane Titleholder and spouse, if any, to John J. Title and Kris M. Title conveying the above described property. Note: The marital status of the grantor(s) of the deed must be shown on the deed.

b) Real Estate Mortgage from John J. Title and spouse, if any, and Kris M. Title and spouse, if any, to Bank of the West, securing a debt in the amount of \$200,000.00. Note: The marital status of the borrower(s) must be shown on the mortgage.

c) Satisfaction or subordination agreement of the mortgages described in 9(a) and 9(b) above.

d) Real Estate Mortgage from John J. Title and spouse, if any, and Kris M. Title and spouse, if any, to Bank of the West, securing a debt in the amount of \$20,000.00.

2. Other clearance items:

a) Composite Mortgage Affidavit signed by the titleholders/buyers and sellers of the subject property and notarized.

b) If mechanic lien claims may be filed of record, then mechanic lien waivers must be submitted for review.

Notes for Information:

1. Lender First has been approved for the following endorsement(s): Comprehensive 1 - Improved Land, Environmental Protection Lien (ALTA 8.1-06), Location - Residential (ALTA 22-06)

Lender Junior has been approved for the following endorsement(s): None

Owner has been approved for the following endorsement(s): None

2. At closing the buyer(s) of a primary residence may elect to receive a free Owner's Certificate from the Title Guaranty Division if the purchase amount is \$500,000.00 or less. The buyer(s) must elect the free coverage and provide the purchase price on the Composite Mortgage Affidavit (2006 version).

End of Schedule B.

COMMITMENT NO.: C-1000553

DATE REVISED: June 25, 2007 at 09:02:34 AM

NOTE: This revision does not extend the effective date of the commitment unless specified.

## ***Section 4.04 Lender Jacket***



## Lender Form - Title Guaranty Certificate

(Same coverage as American Land Title Association Standard Loan Policy 6-17-2006)

**Any notice of claim and any other notice or statement in writing required to be given the Division under this Certificate must be given to the Division at the address shown in Section 17 of the Conditions.**

### Covered Risks

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, the Title Guaranty Division of the Iowa Finance Authority (the "Division"), guarantees, as of Date of Certificate and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Certificate, against loss or damage, not exceeding the Amount of Coverage, sustained or incurred by the Guaranteed by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to coverage against loss from:
  - (a) A defect in the Title caused by:
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to:
  - (a) the occupancy, use or enjoyment of the Land;
  - (b) the character, dimensions or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. The invalidity or unenforceability of the lien of the Guaranteed Mortgage upon the Title. This Covered Risk includes but is not limited to coverage against loss from any of the following impairing the lien of the Guaranteed Mortgage:
  - (a) forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation;
  - (b) failure of any person or Entity to have authorized a transfer or conveyance;
  - (c) the Guaranteed Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized or delivered;
  - (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
  - (e) a document executed under a falsified, expired or otherwise invalid power of attorney;
  - (f) a document not properly filed, recorded or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
  - (g) a defective judicial or administrative proceeding.
10. The lack of priority of the lien of the Guaranteed Mortgage upon the Title over any other lien or encumbrance.

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11. The lack of priority of the lien of the Guaranteed Mortgage upon the Title:
  - (a) as security for each and every advance of proceeds of the loan secured by the Guaranteed Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either:
    - (i) contracted for or commenced on or before Date of Certificate; or
    - (ii) contracted for, commenced, or continued after Date of Certificate if the construction is financed, in whole or in part, by proceeds of the loan secured by the Guaranteed Mortgage that the Guaranteed has advanced or is obligated on Date of Certificate to advance; and
  - (b) over the lien of any assessments for street improvements under construction or completed at Date of Certificate.
12. The invalidity or unenforceability of any assignment of the Guaranteed Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Guaranteed Mortgage in the named Guaranteed assignee free and clear of all liens.
13. The invalidity, unenforceability, lack of priority or avoidance of the lien of the Guaranteed Mortgage upon the Title:
  - (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Guaranteed Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - (b) because the Guaranteed Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records:
    - (i) to be timely, or
    - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Certificate and prior to the recording of the Guaranteed Mortgage in the Public Records.

The Division will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter guaranteed against by this Certificate, but only to the extent provided in the Conditions.

In Witness Whereof, the Title Guaranty Division has caused this Certificate to be signed and sealed in its name by its duly authorized officer, by direction of its Board, to become binding when countersigned by its Director or by a Division Participant.



Title Guaranty Division

By

*Lloyd W. Ogle*

Lloyd W. Ogle, Director

CERTIFICATE NO.: L-100053

DATE: June 10, 2007

## Exclusions from Coverage

The following matters are expressly excluded from the coverage of this Certificate and the Division will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed, or agreed to by the Guaranteed Claimant;
  - (b) not Known to the Division, not recorded in the Public Records at Date of Certificate, but Known to the Guaranteed Claimant and not disclosed in writing to the Division by the Guaranteed Claimant prior to the date the Guaranteed Claimant became a Guaranteed under this Certificate;
  - (c) resulting in no loss or damage to the Guaranteed Claimant;
  - (d) attaching or created subsequent to Date of Certificate (however, this does not modify or limit the coverage provided under Covered Risk 11, 13 or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Guaranteed Claimant had paid value for the Guaranteed Mortgage.
4. Unenforceability of the lien of the Guaranteed Mortgage because of the inability or failure of a Guaranteed to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Guaranteed Mortgage that arises out of the transaction evidenced by the Guaranteed Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Guaranteed Mortgage, is:
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this Certificate.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Certificate and the date of recording of the Guaranteed Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

## Conditions

### 1. Definition of terms

The following terms when used in this Certificate mean:

- (a) "Amount of Coverage": The amount stated in Schedule A, as may be increased or decreased by endorsement to this Certificate, increased by Section 8(b), or decreased by Section 10 of these Conditions.
- (b) "Date of Certificate": The date designated as "Date of Certificate" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Indebtedness": The obligation secured by the Guaranteed Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of:
  - (i) the amount of the principal disbursed as of Date of Certificate;
  - (ii) the amount of the principal disbursed subsequent to Date of Certificate;
  - (iii) the construction loan advances made subsequent to Date of Certificate for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Guaranteed was and continued to be obligated to advance at Date of Certificate and at the date of the advance;
  - (iv) interest on the loan;
  - (v) the prepayment premiums, exit fees and other similar fees or penalties allowed by law;
  - (vi) the expenses of foreclosure and any other costs of enforcement;
  - (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Guaranteed Mortgage before the acquisition of the estate or interest in the Title;

- (viii) the amounts to pay taxes and insurance; and,
  - (ix) the reasonable amounts expended to prevent deterioration of improvements;
- but the Indebtedness is reduced by the total of all payments and by any amount forgiven by a Guarantor.

"Guaranteed": the Guaranteed named in Schedule A.

(e) The term "Guaranteed" also includes:

- (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;
- (B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
- (C) successors to a Guaranteed by dissolution, merger, consolidation, distribution, or reorganization;
- (D) successors to a Guaranteed by its conversion to another kind of Entity;
- (E) a grantee of a Guaranteed under a deed delivered without payment of actual valuable consideration conveying the Title:
  - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Guaranteed,

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- (2) if the grantee wholly owns the named Guaranteed, or
  - (3) if the grantee is wholly-owned by an affiliated Entity of the named Guaranteed, provided the affiliated Entity and the named Guaranteed are both wholly-owned by the same person or Entity;
  - (F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the Guaranteed Mortgage, or any part of it, whether named as a Guaranteed or not;
  - (ii) With regard to (A), (B), (C), (D) and (E) reserving, however, all rights and defenses as to any successor that the Division would have had against any predecessor or Guaranteed, unless the successor acquired the indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance or other matter guaranteed against by this Certificate.
  - (f) "Guaranteed Claimant": A Guaranteed claiming loss or damage.
  - (g) "Guaranteed Mortgage": The Mortgage described in paragraph 4 of Schedule A.
  - (h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to a Guaranteed by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
  - (i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit the extent that a right of access to and from the Land is guaranteed by this Certificate.
  - (j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
  - (k) "Public Records": Records established under Iowa statutes at Date of Certificate for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
  - (l) "Title": The estate or interest described in Schedule A.
  - (m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Guaranteed Mortgage to be released from the obligation to purchase, lease or lend if there is a contractual condition requiring the delivery of marketable title.
2. Continuation of Coverage
- The coverage of this Certificate shall continue in force as of Date of Certificate in favor of a Guaranteed after acquisition of the Title by a Guaranteed or after conveyance by a Guaranteed, but only so long as the Guaranteed retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Guaranteed, or only so long as the Guaranteed shall have liability by reason of warranties in any transfer or conveyance of the Title. This Certificate shall not continue in force in favor of any purchaser from the Guaranteed of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Guaranteed.
3. Notice of claim to be given by Guaranteed Claimant
- The Guaranteed shall notify the Division promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to a Guaranteed of any claim of title or interest that is adverse to the Title or the lien of the Guaranteed Mortgage, as guaranteed, and that might cause loss or damage for which the Division may be liable by virtue of this Certificate, or (iii) if the Title or the lien of the Guaranteed Mortgage, as guaranteed, is rejected as Unmarketable Title. If the Division is prejudiced by the failure of the Guaranteed Claimant to provide prompt notice, the Division's liability to the Guaranteed Claimant under the Certificate shall be reduced by the extent of the prejudice.
4. Proof of loss
- In the event the Division is unable to determine the amount of loss or damage, the Division may, at its option, require as a condition of payment that the Guaranteed Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance or other matter guaranteed against by this Certificate that constitutes the basis of loss or damage and shall state, to the

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- extent possible, the basis of calculating the amount of the loss or damage.
5. Defense and prosecution of actions
- (a) Upon written request by the Guaranteed, and subject to the options contained in Section 7 of these Conditions, the Division, at its own cost and without unreasonable delay, shall provide for the defense of a Guaranteed in litigation in which any third party asserts a claim covered by this Certificate adverse to the Guaranteed. This obligation is limited to only those stated causes of action alleging matters guaranteed against by this Certificate. The Division shall have the right to select counsel of its choice (subject to the right of the Guaranteed to object for reasonable cause) to represent the Guaranteed as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Division will not pay any fees, costs or expenses incurred by the Guaranteed in the defense of those causes of action that allege matters not guaranteed against by this Certificate.
  - (b) The Division shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Guaranteed Mortgage, as guaranteed, or to prevent or reduce loss or damage to the Guaranteed. The Division may take any appropriate action under the terms of this Certificate, whether or not it shall be liable to the Guaranteed. The exercise of these rights shall not be an admission of liability or waiver of any provision of this Certificate. If the Division exercises its rights under this subsection, it must do so diligently. Whenever the Division brings an action or asserts a defense as required or permitted by this Certificate, the Division may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.
6. Duty of Guaranteed Claimant to cooperate
- (a) In all cases where this Certificate permits or requires the Division to prosecute or provide for the defense of any action or proceeding and any appeals, the Guaranteed shall secure to the Division the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Guaranteed for this purpose. Whenever requested by the Division, the Guaranteed, at the Division's expense, shall give the Division all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Division may be necessary or desirable to establish the Title, the lien of the Guaranteed Mortgage, or any other matter as guaranteed. If the Division is prejudiced by the failure of the Guaranteed to furnish the required cooperation, the Division's obligations to the Guaranteed under the Certificate shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
  - (b) The Division may reasonably require the Guaranteed Claimant to submit to examination under oath by any authorized representative of the Division and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Division, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Certificate, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Division, the Guaranteed Claimant shall grant its permission, in writing, for any authorized representative of the Division to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Guaranteed Claimant provided to the Division pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Division, it is necessary in the administration of the claim. Failure of the Guaranteed Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Division under this Certificate as to that claim.
7. Options to pay or otherwise settle claims; termination of liability
- In case of a claim under this Certificate, the Division shall have the following additional options:
- (a) To Pay or Tender Payment of the Amount of Coverage or to Purchase the Indebtedness.

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- (i) To pay or tender payment of the Amount of Coverage under this Certificate together with any costs, attorneys' fees, and expenses incurred by the Guaranteed Claimant that were authorized by the Division up to the time of payment or tender of payment and that the Division is obligated to pay; or
- (ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Guaranteed Claimant that were authorized by the Division up to the time of purchase and that the Division is obligated to pay.
- When the Division purchases the Indebtedness, the Guaranteed shall transfer, assign, and convey to the Division the Indebtedness and the Guaranteed Mortgage, together with any collateral security.
- Upon the exercise by the Division of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Division to the Guaranteed under this Certificate, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other than the Guaranteed or With the Guaranteed Claimant.
- (i) To pay or otherwise settle with other parties for or in the name of a Guaranteed Claimant any claim guaranteed against under this Certificate. In addition, the Division will pay any costs, attorneys' fees, and expenses incurred by the Guaranteed Claimant that were authorized by the Division up to the time of payment and that the Division is obligated to pay; or
- (ii) To pay or otherwise settle with the Guaranteed Claimant the loss or damage provided for under this Certificate, together with any costs, attorneys' fees, and expenses incurred by the Guaranteed Claimant that were authorized by the Division up to the time of payment and that the Division is obligated to pay.
- Upon the exercise by the Division of either of the options provided for in subsections (b)(i) or (ii), the Division's obligations to the Guaranteed under this Certificate for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.
8. **Determination and extent of liability**
- This Certificate is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Guaranteed Claimant who has suffered loss or damage by reason of matters guaranteed against by this Certificate.
- (a) The extent of liability of the Division for loss or damage under this Certificate shall not exceed the least of:
- (i) the Amount of Coverage;
- (ii) the Indebtedness;
- (iii) the difference between the value of the Title as guaranteed and the value of the Title subject to the risk guaranteed against by this Certificate; or
- (iv) if a government agency or instrumentality is the Guaranteed Claimant, the amount it paid in the acquisition of the Title or the Guaranteed Mortgage in satisfaction of its insurance contract or guaranty.
- (b) If the Division pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Guaranteed Mortgage, as guaranteed,
- (i) the Amount of Coverage shall be increased by 10%; and
- (ii) the Guaranteed Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Guaranteed Claimant or as of the date it is settled and paid.
- (c) In the event the Guaranteed has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Division shall continue as set forth in Section 8(a) of these Conditions.
- (d) In addition to the extent of liability under (a), (b) and (c), the Division will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.
9. **Limitation of liability**
- (a) If the Division establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Guaranteed Mortgage, all as guaranteed, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the
- Guaranteed.
- (b) In the event of any litigation, including litigation by the Division or with the Division's consent, the Division shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Guaranteed Mortgage, as guaranteed.
- (c) The Division shall not be liable for loss or damage to the Guaranteed for liability voluntarily assumed by the Guaranteed in settling any claim or suit without the prior written consent of the Division.
10. **Reduction of Coverage; reduction or termination of liability**
- (a) All payments under this Certificate, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Coverage by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Coverage afforded under this Certificate except to the extent that the payments reduce the Indebtedness.
- (b) The voluntary satisfaction or release of the Guaranteed Mortgage shall terminate all liability of the Division except as provided in Section 2 of these Conditions.
11. **Payment of loss**
- When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.
12. **Rights of recovery upon payment or settlement**
- (a) **The Division's Right to Recover:**
- Whenever the Division shall have settled and paid a claim under this Certificate, it shall be subrogated and entitled to the rights of the Guaranteed Claimant in the Title or Guaranteed Mortgage and all other rights and remedies in respect to the claim that the Guaranteed Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Division. If requested by the Division, the Guaranteed Claimant shall execute documents to evidence the transfer to the Division of these rights and remedies. The Guaranteed Claimant shall permit the Division to sue, compromise, or settle in the name of the Guaranteed Claimant and to use the name of the Guaranteed Claimant in any transaction or litigation involving these rights and remedies.
- If a payment on account of a claim does not fully cover the loss of the Guaranteed Claimant, the Division shall defer the exercise of its right to recover until after the Guaranteed Claimant shall have recovered its loss.
- (b) **The Guaranteed's Rights and Limitations:**
- (i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Guaranteed Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Guaranteed Mortgage.
- (ii) If the Guaranteed exercises a right provided in (b)(i), but has knowledge of any claim adverse to the Title or the lien of the Guaranteed Mortgage guaranteed against by this Certificate, the Division shall be required to pay only that part of any losses guaranteed against by this Certificate that shall exceed the amount, if any, lost to the Division by reason of the impairment by the Guaranteed Claimant of the Division's right of subrogation.
- (c) **The Division's Rights Against Non-guaranteed Obligors:**
- The Division's right of subrogation includes the Guaranteed's rights against non-guaranteed obligors including the rights of the Guaranteed to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.
- The Division's right of subrogation shall not be avoided by acquisition of the Guaranteed Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Guaranteed Mortgage as a result of an indemnity, guaranty, other policy of insurance, or bond, and the obligor will not be a Guaranteed under this Certificate.
13. **Arbitration - deleted**
14. **Liability limited to this Certificate; Certificate entire contract**
- (a) This Certificate together with all endorsements, if any, attached to it by the Division is the entire Certificate and contract between the Guaranteed and the Division. In interpreting any provision of this Certificate, this Certificate shall be construed as a whole.

- (b) Any claim of loss or damage that arises out of the status of the Title or lien of the Guaranteed Mortgage or by any action asserting such claim shall be restricted to this Certificate.
  - (c) Any amendment of or endorsement to this Certificate must be in writing and authenticated by an authorized person.
  - (d) Each endorsement to this Certificate issued at any time is made a part of this Certificate and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsement, (iii) extend the Date of Certificate or (iv) increase the Amount of Coverage.
15. Severability  
In the event any provision of this Certificate, in whole or in part, is held invalid or unenforceable under applicable law, the Certificate shall be deemed not to include that provision or such part held to be invalid, and all other provisions shall remain in full force and effect.
16. Choice of law; forum
- (a) Choice of Law: The Guaranteed acknowledges the Division has underwritten the risks covered by this Certificate and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies or enforcement of Title Guaranty Certificates in Iowa. Therefore, the court shall apply the law of Iowa to determine the validity of claims against the Title or the lien of the Guaranteed Mortgage that are adverse to the Guaranteed, and in interpreting and enforcing the terms of this Certificate. In neither case shall the court apply its conflicts of laws principles to determine the applicable law.
  - (b) Choice of Forum: Any litigation or other proceeding of a judicial or quasi-judicial nature related to or arising from this Certificate shall be brought and maintained in the Iowa District Court for Polk County in Des Moines, Iowa.
17. Notices, where sent  
Any notice of claim and any other notice or statement in writing required to be given to the Division under this Certificate must be given to the Division at 2015 Grand Avenue, Des Moines, Iowa 50312.

**Title Guaranty**  
A Division of the Iowa Finance Authority  
800-432-7230  
  
2015 Grand Avenue  
Des Moines, Iowa 50312  
[www.IowaFinanceAuthority.gov](http://www.IowaFinanceAuthority.gov)

CERTIFICATE NO.: L-1000533

DATE: June 10, 2007

## ***Section 4.05 Lender Schedule A***



## Lender Form Schedule A

Certificate No.: L-1000553

Loan No.: 789456123

Address, For Reference Purposes Only: 8304 Winston Avenue, Urbandale, IA

Date of Certificate: June 10, 2007 at 10:47:00 AM Amount of Coverage: \$135,000.00

**1. Name of Guaranteed:**

Bank of the West its successors and/or assigns, Johnston, IA

**2. The estate or interest in the Land that is encumbered by the Guaranteed Mortgage is a fee simple (if other, specify same):**

Fee Simple

**3. Title is vested in:**

John J. Title and Kris M. Title, husband and wife, as joint tenants with full rights of survivorship and not as tenants in common.

**4. The Guaranteed Mortgage, and its assignments, if any, are described as follows:**

Mortgage in the amount of \$135,000.00 dated June 10, 2007, filed June 10, 2007, in Book 23400, at Page 456 of the Polk County, Iowa, Recorder's Office, given by John J. Title and Kris M. Title, husband and wife, to Bank of the West.

**5. The Land referred to in this Certificate is described as follows:**

Lot 26 in Northwest Country Club Manor, Plat 4, an Official Plat, now included in and forming a part of the City of Urbandale, Polk County, Iowa.

**6. This Certificate incorporates those endorsements listed below:**

Environmental Protection Lien (ALTA 8.1-06)

Location - Residential (ALTA 22-06)

Endorsement Against Loss-Lien

Endorsement Against Loss-Lien

Prepared By John Test  
Typed Name

Test Law Firm

Member Name

200 E. Grand Ave., Suite 350

(Mailing Address)

Signature of Member

Des Moines, IA

(City, State)

50309

(Zip)

CERTIFICATE NO.: L-1000553

DATE: June 10, 2007

## ***Section 4.06 Lender Schedule B***



## Lender Form Schedule B

Certificate Number: L-1000553

### Exceptions From Coverage

#### Schedule B - Part I

This Certificate does not guarantee against loss or damage (and the Division will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. The lien of the taxes for the July 1, 2006 - June 30, 2007 fiscal year and thereafter, with the first half due on September 1, 2007 (delinquent after September 30, 2007) and the second half due on March 1, 2008 (delinquent after March 31, 2008). None now due and payable.
2. Ordinances and regulations for the City of Urbandale and County of Polk, Iowa.
3. Plat(s) filed in the Polk County, Iowa, Recorder's Office, including all easements, building setbacks, restrictions, reservations and notations.
4. Declarations, covenants, restrictions, easements, reservations, rights and options filed of record in Polk County, Iowa, Recorder's Office.
5. Utility Easement in favor of MidAmerican Energy filed July 1, 2002 in Book 22490, at Page 245.
6. Restrictive Covenants filed February 5, 2000 in Book 12000, at Page 234, and as amended from time to time.
7. Mortgage in favor of Central State Bank dated April 1, 2005, filed April 4, 2005 in Book 23400, at Page 55, to secure an indebtedness of \$34,000.00
8. Mortgage in favor of U.S. Bank, N.A. dated April 1, 2005, filed April 4, 2005 in Book 23400, at Page 89, to secure an indebtedness of \$11,000.00.

#### Schedule B - Part II

In addition to the matters set forth in Part I of this Schedule, the title is subject to the following matters and the Division guarantees against loss or damage sustained in the event that they are not subordinate to the lien of the Guaranteed Mortgage:

Mortgage in the amount of \$30,000.00 dated June 10, 2007, filed June 10, 2007, in Book 23400, at Page 465 of the Polk County, Iowa, Recorder's Office, given by John J. Title and Kris M. Title, husband and wife, to Bank of the West.

End of Schedule B, Parts I and II.

CERTIFICATE NO.: L-1000553

DATE: June 10, 2007

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**Signature of Member**

**CERTIFICATE NO.: L-100053**

**DATE: June 10, 2007**

## *Section 4.07 Owner Jacket*



## Owner Form - Title Guaranty Certificate

(Same coverage as American Land Title Association Standard Policy 6-17-2006)

**Any notice of claim and any other notice or statement in writing required to be given the Division under this Certificate must be given to the Division at the address shown in Section 18 of the Conditions.**

### Covered Risks

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, the Title Guaranty Division of the Iowa Finance Authority (the "Division"), guarantees, as of Date of Certificate and, to the extent stated in Covered Risk 9 and 10, after Date of Certificate, against loss or damage, not exceeding the Amount of Coverage, sustained or incurred by the Guaranteed by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to coverage against loss from:
  - (a) A defect in the Title caused by:
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to:
  - (a) the occupancy, use or enjoyment of the Land;
  - (b) the character, dimensions or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective:
  - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records:
    - (i) to be timely, or
    - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
- 10.

CERTIFICATE NO.: O-1000553

DATE: June 10, 2007

Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Certificate and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Division will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter guaranteed against by this Certificate, but only to the extent provided in the Conditions.

In Witness Whereof, the Title Guaranty Division has caused this Certificate to be signed and sealed in its name by its duly authorized officer, by direction of its Board, to become binding when countersigned by its Director or by a Division Participant.



**Title Guaranty Division**

By

*Lloyd W. Ogle*

**Lloyd W. Ogle, Director**

CERTIFICATE NO.: Q-100053

DATE: June 10, 2007

## Exclusions from Coverage

The following matters are expressly excluded from the coverage of this Certificate and the Division will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed, or agreed to by the Guaranteed Claimant;
  - (b) not Known to the Division, not recorded in the Public Records at Date of Certificate, but Known to the Guaranteed Claimant and not disclosed in writing to the Division by the Guaranteed Claimant prior to the date the Guaranteed Claimant became a Guaranteed under this Certificate;
  - (c) resulting in no loss or damage to the Guaranteed Claimant;
  - (d) attaching or created subsequent to Date of Certificate (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Guaranteed Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is:
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this Certificate.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Certificate and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

## Conditions

### 1. Definition of terms

The following terms when used in this Certificate mean:

- (a) "Amount of Coverage": the amount stated in Schedule A, as may be increased or decreased by endorsement to this Certificate, increased by Section 8(b), or decreased by Sections 11 and 12 of these Conditions.
- (b) "Date of Certificate": The date designated as "Date of Certificate" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Guaranteed": the Guaranteed named in Schedule A.
  - (i) The term "Guaranteed" also includes:
    - (A) successors to the Title of the Guaranteed by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
    - (B) successors to a Guaranteed by dissolution, merger, consolidation, distribution, or reorganization;
    - (C) successors to a Guaranteed by its conversion to another kind of Entity;
    - (D) a grantee of a Guaranteed under a deed delivered without payment of actual valuable consideration conveying the Title:
      - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Guaranteed,
      - (2) if the grantee wholly owns the named Guaranteed, or
      - (3) if the grantee is wholly-owned by an affiliated Entity of the named Guaranteed, provided the affiliated Entity and the named Guaranteed are both wholly-owned by the same persons or Entity;
      - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument

established by the Guaranteed named in Schedule A for estate planning purposes.

- (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Division would have had against any predecessor or Guaranteed.
- (e) "Guaranteed Claimant": A Guaranteed claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to a Guaranteed by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but this does not modify or limit the extent that a right of access to and from the Land is guaranteed by this Certificate.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under Iowa statutes at Date of Certificate for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease or lend if there is a contractual condition requiring the delivery of marketable title.

### 2. Continuation of Coverage

The coverage of this Certificate shall continue in force as of Date of Certificate

CERTIFICATE NO.: Q-100053

DATE: June 10, 2007

in favor of a Guaranteed, but only so long as the Guaranteed retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Guaranteed, or only so long as the Guaranteed shall have liability by reason of warranties in any transfer or conveyance of the Title. This Certificate shall not continue in force in favor of any purchaser from the Guaranteed of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Guaranteed.

3. Notice of claim to be given by Guaranteed Claimant

The Guaranteed shall notify the Division promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to a Guaranteed of any claim of title or interest that is adverse to the Title, as guaranteed, and that might cause loss or damage for which the Division may be liable by virtue of this Certificate, or (iii) if the Title, as guaranteed, is rejected as Unmarketable Title. If the Division is prejudiced by the failure of the Guaranteed Claimant to provide prompt notice, the Division's liability to the Guaranteed Claimant under the Certificate shall be reduced by the extent of the prejudice.

4. Proof of loss

In the event the Division is unable to determine the amount of loss or damage, the Division may, at its option, require as a condition of payment that the Guaranteed Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance or other matter guaranteed against by this Certificate that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. Defense and prosecution of Actions

- (a) Upon written request by the Guaranteed, and subject to the options contained in Section 7 of these Conditions, the Division, at its own cost and without unreasonable delay, shall provide for the defense of a Guaranteed in litigation in which any third party asserts a claim covered by this Certificate adverse to the Guaranteed. This obligation is limited to only those stated causes of action alleging matters guaranteed against by this Certificate. The Division shall have the right to select counsel of its choice (subject to the right of the Guaranteed to object for reasonable cause) to represent the Guaranteed as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Division will not pay any fees, costs or expenses incurred by the Guaranteed in the defense of those causes of action that allege matters not guaranteed against by this Certificate.
- (b) The Division shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as guaranteed, or to prevent or reduce loss or damage to the Guaranteed. The Division may take any appropriate action under the terms of this Certificate, whether or not it shall be liable to the Guaranteed. The exercise of these rights shall not be an admission of liability or waiver of any provision of this Certificate. If the Division exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Division brings an action or asserts a defense as required or permitted by this Certificate, the Division may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

6. Duty of Guaranteed Claimant to cooperate

- (a) In all cases where this Certificate permits or requires the Division to prosecute or provide for the defense of any action or proceeding and any appeals, the Guaranteed shall secure to the Division the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Guaranteed for this purpose. Whenever requested by the Division, the Guaranteed, at the Division's expense, shall give the Division all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Division may be necessary or desirable to establish the Title or any other matter as guaranteed. If the Division is prejudiced by the failure of the Guaranteed to furnish the required cooperation, the Division's obligations to the Guaranteed under the Certificate shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Division may reasonably require the Guaranteed Claimant to submit

to examination under oath by any authorized representative of the Division and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Division, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Certificate, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Division, the Guaranteed Claimant shall grant its permission, in writing, for any authorized representative of the Division to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Guaranteed Claimant provided to the Division pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Division, it is necessary in the administration of the claim. Failure of the Guaranteed Claimant to submit it for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Division under this Certificate as to that claim.

7. Options to pay or otherwise settle claims; termination of liability

In case of a claim under this Certificate, the Division shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Coverage.  
To pay or tender payment of the Amount of Coverage under this Certificate together with any costs, attorneys' fees, and expenses incurred by the Guaranteed Claimant that were authorized by the Division up to the time of payment or tender of payment and that the Division is obligated to pay. Upon the exercise by the Division of this option, all liability and obligations of the Division to the Guaranteed under this Certificate, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other than the Guaranteed or With the Guaranteed Claimant.
  - (i) To pay or otherwise settle with other parties for or in the name of a Guaranteed Claimant any claim guaranteed against under this Certificate. In addition, the Division will pay any costs, attorneys' fees, and expenses incurred by the Guaranteed Claimant that were authorized by the Division up to the time of payment and that the Division is obligated to pay; or
  - (ii) To pay or otherwise settle with the Guaranteed Claimant the loss or damage provided for under this Certificate, together with any costs, attorneys' fees, and expenses incurred by the Guaranteed Claimant that were authorized by the Division up to the time of payment and that the Division is obligated to pay.

Upon the exercise by the Division of either of the options provided for in subsections (b)(i) or (ii), the Division's obligations to the Guaranteed under this Certificate for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

8. Determination and extent of liability

This Certificate is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Guaranteed Claimant who has suffered loss or damage by reason of matters guaranteed against by this Certificate.

- (a) The extent of liability of the Division for loss or damage under this Certificate shall not exceed the lesser of:
  - (i) the Amount of Coverage; or
  - (ii) the difference between the value of the Title as guaranteed and the value of the Title subject to the risk guaranteed against by this Certificate.
- (b) If the Division pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as guaranteed,
  - (i) the Amount of Coverage shall be increased by 10%; and
  - (ii) the Guaranteed Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Guaranteed Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Division will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. **Limitation of liability**
  - (a) If the Division establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as guaranteed, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Guaranteed.
  - (b) In the event of any litigation, including litigation by the Division or with the Division's consent, the Division shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as guaranteed.
  - (c) The Division shall not be liable for loss or damage to the Guaranteed for liability voluntarily assumed by the Guaranteed in settling any claim or suit without the prior written consent of the Division.
10. **Reduction of Coverage; reduction or termination of liability**  
All payments under this Certificate, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Coverage by the amount of the payment.
11. **Liability non cumulative**  
The amount of Coverage shall be reduced by any amount the Division pays under any Certificate guaranteeing a Mortgage to which exception is taken in Schedule B or to which the Guaranteed has agreed, assumed, or taken subject, or which is executed by a Guaranteed after Date of Certificate and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Guaranteed under this Certificate.
12. **Payment of loss**  
When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.
13. **Rights of recovery upon payment or settlement**
  - (a) Whenever the Division shall have settled and paid a claim under this Certificate, it shall be subrogated and entitled to the rights of the Guaranteed Claimant in the Title and all other rights and remedies in respect to the claim that the Guaranteed Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Division. If requested by the Division the Guaranteed Claimant shall execute documents to evidence the transfer to the Division of these rights and remedies. The Guaranteed Claimant shall permit the Division to sue, compromise, or settle in the name of the Guaranteed Claimant and to use the name of the Guaranteed Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Guaranteed Claimant, the Division shall defer the exercise of its right to recover until after the Guaranteed Claimant shall have recovered its loss.
  - (b) The Division's right of subrogation includes the rights of the Guaranteed to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.
14. **Arbitration - deleted**
15. **Liability limited to this Certificate; Certificate entire contract**
  - (a) This Certificate together with all endorsements, if any, attached to it by the Division is the entire Certificate and contract between the Guaranteed and the Division. In interpreting any provision of this Certificate, this Certificate shall be construed as a whole.
  - (b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this Certificate.
  - (c) Any amendment of or endorsement to this Certificate must be in writing and authenticated by an authorized person.
  - (d) Each endorsement to this Certificate issued at any time is made a part of this Certificate and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsement, (iii) extend the Date of Certificate or (iv) increase the Amount of Coverage.
16. **Severability**  
In the event any provision of this Certificate, in whole or in part, is held invalid or unenforceable under applicable law, the Certificate shall be deemed not to include that provision or such part held to be invalid, and all other provisions shall remain in full force and effect.
17. **Choice of law; forum**
  - (a) **Choice of Law:** The Guaranteed acknowledges the Division has underwritten the risks covered by this Certificate and determined the premium charged therefore in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies or enforcement of Title Guaranty Certificates in Iowa. Therefore, the court shall apply the law of Iowa to determine the validity of claims against the Title that are adverse to the Guaranteed, and in interpreting and enforcing the terms of this Certificate. In neither case shall the court apply its conflicts of laws principles to determine the applicable law.
  - (b) **Choice of Forum:** Any litigation or other proceeding of a judicial or quasi-judicial nature related to or arising from this Certificate shall be brought and maintained in the Iowa District Court for Polk County in Des Moines, Iowa.
18. **Notices, where sent**  
Any notice of claim and any other notice or statement in writing required to be given to the Division under this Certificate must be given to the Division at 2015 Grand Avenue, Des Moines, Iowa 50312.

### Title Guaranty

A Division of the Iowa Finance Authority  
800-432-7230

2015 Grand Avenue  
Des Moines, Iowa 50312  
[www.IowaFinanceAuthority.gov](http://www.IowaFinanceAuthority.gov)

CERTIFICATE NO.: Q-1000533

DATE: June 10, 2007

## ***Section 4.08 Owner Schedule A***



## Owner Form Schedule A

Certificate No.: O-1000553

Address, For Reference Purposes Only: 8304 Winston Avenue, Urbandale, IA

Date of Certificate: June 10, 2007 at 10:47:00 AM Amount of Coverage: \$220,000.00

**1. Name of Guaranteed:**

John J. Title and Kris M. Title, husband and wife, husband and wife, as joint tenants with full rights of survivorship, and not as tenants in common.

**2. The estate or interest in the Land that is guaranteed by this Certificate is a fee simple (if other, specify same):**

Fee Simple

**3. Title is vested in:**

John J. Title and Kris M. Title, husband and wife, husband and wife, as joint tenants with full rights of survivorship, and not as tenants in common.

**4. The Land referred to in this Certificate is described as follows:**

Lot 26 in Northwest Country Club Manor, Plat 4, an Official Plat, now included in and forming a part of the City of Urbandale, Polk County, Iowa.

**5. This Certificate incorporates those endorsements listed below:**

Endorsement Against Loss-Lien

Endorsement Against Loss-Lien

Prepared By John Test  
Typed Name

Test Law Firm  
Member Name  
200 E. Grand Ave., Suite 350  
(Mailing Address)

Signature of Member  
Des Moines, IA 50309  
(City, State) (Zip)

CERTIFICATE NO.: O-1000553

DATE: June 10, 2007

## ***Section 4.09 Owner Schedule B***



## Owner Form Schedule B

Certificate Number: O-1000553

### Exceptions From Coverage

This Certificate does not guarantee against loss or damage (and the Division will not pay costs, attorneys' fees or expenses) that arise by reason of:

**Standard (notwithstanding the guaranteeing clauses of this Guaranty):**

1. Rights or claims of parties in possession not shown by the Public Records.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Easements, or claims of easements, not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Taxes or special assessments which are not shown as existing liens by the Public Records.

**Special:**

6. The lien of the taxes for the July 1, 2006 - June 30, 2007 fiscal year and thereafter, with the first half due on September 1, 2007 (delinquent after September 30, 2007) and the second half due on March 1, 2008 (delinquent after March 31, 2008). None now due and payable.

7. Ordinances and regulations for the City of Urbandale and County of Polk, Iowa.

8. Plat(s) filed in the Polk County, Iowa, Recorder's Office, including all easements, building setbacks, restrictions, reservations and notations.

9. Declarations, covenants, restrictions, easements, reservations, rights and options filed of record in Polk County, Iowa, Recorder's Office.

10. Utility Easement in favor of MidAmerican Energy filed July 1, 2002 in Book 22490, at Page 245.

11. Restrictive Covenants filed February 5, 2000 in Book 12000, at Page 234, and as amended from time to time.

12. Mortgage in favor of Central State Bank dated April 1, 2005, filed April 4, 2005 in Book 23400, at Page 55, to secure an indebtedness of \$34,000.00

13. Mortgage in favor of U.S. Bank, N.A. dated April 1, 2005, filed April 4, 2005 in Book 23400, at Page 89, to secure an indebtedness of \$11,000.00.

CERTIFICATE NO.: O-1000553

DATE: June 10, 2007

14. Mortgage in the amount of \$135,000.00 dated June 10, 2007, filed June 10, 2007, in Book 23400, at Page 456 of the Polk County, Iowa, Recorder's Office, given by John J. Title and Kris M. Title, husband and wife, to Bank of the West.

15. Mortgage in the amount of \$30,000.00 dated June 10, 2007, filed June 10, 2007, in Book 23400, at Page 465 of the Polk County, Iowa, Recorder's Office, given by John J. Title and Kris M. Title, husband and wife, to Bank of the West.

End of Schedule B

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Signature of Member

CERTIFICATE NO.: Q-100053

DATE: June 10, 2007

### ***Section 4.10 Use of the Composite Mortgage Affidavit***

The Composite Mortgage Affidavit (hereinafter referred to as “CMA”) provides a convenient and uniform method of documenting underwriting information concerning mechanic’s liens, survey matters, and possession rights. This information is needed when issuing the Commitment and/or Certificate(s).

The CMA is intended to provide confirming evidence that there are no apparent problems, such as mechanic’s liens, survey matters, unrecorded easements, possession rights, violations of restrictions, etc. If problems are revealed, further inquiry should be made. If the matter cannot be resolved, it must be shown as an exception in Schedule B of the Commitment and/or Certificate(s), and certain Endorsements may not be issued.

The closer of the transaction should insert the Commitment and the Loan Number at the top of the document, and obtain the notarized signatures of the owner(s) and, if the property is being sold, by the purchaser(s). If the Division is to issue the Certificate(s), the closer should forward the original CMA with the Application to the Division. If a Field Issuer is issuing the Certificate(s), the closer will forward the original to the Field Issuer, who will retain the CMA.

The Division has two CMA forms: the CMA for primary residences (hereinafter referred to as “Primary Residence CMA”) and the CMA intended for all purposes (hereinafter referred to as “All Purpose CMA”).

The Primary Residence CMA is a simplified form used for owner-occupied properties. Homebuyers and sellers will find this form easier to understand as it utilizes layman’s terminology. The parties will need to fill out the property address at paragraph 1, and the buyer(s) will also complete paragraph 5 to elect or decline a free Owner Certificate if the property will be their primary residence. If the parties prefer, they may also elect to use the All Purpose CMA instead of the Primary Residence CMA.

If the homebuyers and sellers cannot make the representations included in the Primary Residence CMA, they will use the All Purpose CMA, which entails answering all the paragraphs.

Other types of transactions, such as those for second homes, residential investment properties, commercial, industrial, agricultural, and bare land, will use the All Purpose CMA.



## Composite Mortgage Affidavit (2006)

(Primary Residence)

Commitment No. \_\_\_\_\_

Loan No. \_\_\_\_\_

1. No work, materials or equipment have been furnished in the last 90 days, before the date of closing, on the property located at:

(Note: If work, materials or equipment have been furnished, attach all lien waivers.)

2. There are no public improvements affecting the above described property prior to the date of closing that would cause a special property tax assessment against such property after the date of closing.
3. To the best of my knowledge, there are no unrecorded contracts, options, leases, easements or other agreements or interests affecting the above described property.
4. Borrower(s)/purchaser(s) confirm that the above described property is or will be my primary place of residence.
5. Purchaser(s) may Elect \_\_\_\_\_ or Decline \_\_\_\_\_ (initial choice) to receive a standard Owner's Certificate for the full purchase price of \$\_\_\_\_\_. (Not available for purchases over \$500,000.)
6. The improvements located upon the above described property are wholly contained within the property boundary and setback lines; and further that neighboring buildings, fences, walkways, driveways, eaves, drains, etc., do not encroach upon the above described property.
7. I am familiar with the covenants, conditions or restrictions, if any, for the above described property, and there are no known violations of said covenants, conditions or restrictions.
8. The undersigned affiant(s) knows that the matters herein stated are true and indemnify the Title Guaranty Division of the Iowa Finance Authority against loss, costs, damages and expenses of every kind incurred by it by reason of its reliance on the statements made herein.
9. Any person or party signing this Affidavit who is also the borrower in a mortgage to be guaranteed under a Lender Certificate issued by Title Guaranty states that the mortgage and the principal obligations therein are good and valid and free from all defenses; and that any purchaser of the mortgage may rely upon the truth of the statements made herein.

**Seller(s) or Owner(s):**

**Purchaser(s)**

\_\_\_\_\_  
(Typed Name)  
\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Typed Name)  
\_\_\_\_\_  
(Typed Name)

Subscribed and sworn before me, a Notary Public in and for \_\_\_\_\_ County and State of Iowa, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(place notary stamp or seal here)

\_\_\_\_\_  
Notary Public

Subscribed and sworn before me, a Notary Public in and for \_\_\_\_\_ County and State of Iowa, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(place notary stamp or seal here)

\_\_\_\_\_  
Notary Public

Note: Sellers and purchasers should execute separate affidavits. If the property will not be a primary residence or the above representations cannot be made, the All Purpose CMA must be executed.



## Composite Mortgage Affidavit (2006)

(All Purpose)

Commitment No. \_\_\_\_\_ Loan No. \_\_\_\_\_  
Property Address: \_\_\_\_\_  
\_\_\_\_\_

The undersigned state to the Division that with respect to the land described in the above listed Commitment or Certificate to guarantee title, and to their best knowledge and belief:

1. Within the last ninety (90) days
  - a. No labor, services or materials have been furnished to improve the land or to rehabilitate, repair, refurbish or remodel the building(s) situated on the land
  - b. Nor have any goods, chattels, machinery, apparatus or equipment been attached to the land or building(s) thereon, as fixtures
  - c. Nor have any contracts been let for the furnishing of labor, service, materials, machinery, apparatus or equipment that are to be completed subsequent to the date hereof
  - d. Nor have any notices of lien been received, **except:** \_\_\_\_\_

Note: Please attach all lien waivers

2. There are no unrecorded security agreements, leases, financing statements, chattel mortgages, or conditional sales agreements regarding any appliances, equipment or chattels that have or are to become attached to the land or any improvements thereon as fixtures, **except:** (attach copies) \_\_\_\_\_
3. There are no unrecorded contracts or options to purchase the land, **except:** (attach copies) \_\_\_\_\_
4. There are no unrecorded leases, easements, or other servitudes to which the land or building, or portions thereof, are subject, **except:** (attach copies): \_\_\_\_\_
5.
  - a) The improvements (house, garage, outbuilding, etc.) on the subject property are within the boundary lines and set back lines if any, of said property
  - b) There are no encroachments by improvements (buildings, fences, walkways, driveways, eaves, drains, etc.) from adjoining property on to the land
  - c) There is no known assertion being made by either the undersigned or the owners of adjoining property against the other as to the location of boundary lines
  - d) There is no dispute as to the occupancy of any portion of the subject property, **except:** \_\_\_\_\_

6. Please choose either (a) or (b) below:

- ☐ (a) There are no covenants, conditions or restrictions which limit the use of said property.
- ☐ (b) I am familiar with the covenants, conditions or restrictions recorded in Book \_\_\_\_\_ Page \_\_\_\_\_, in the Recorder's Office of \_\_\_\_\_ County, Iowa, and there are no violations of any of the provisions of said covenants, conditions and restrictions, **except:** \_\_\_\_\_

7. Borrower(s)/purchaser(s) verify that the property (choose one of the following)  
☐ is or will be used ☐ is not or will not be used as a principal residence.  
 If the property is or will be used as a principal residence, please complete paragraph 8 below.
8. Purchaser(s) may **Elect** \_\_\_\_\_ or **Decline** \_\_\_\_\_ (initial choice) to receive a standard Owner's Certificate for the full purchase price of \$ \_\_\_\_\_.  
 (Not available for purchases over \$500,000).
9. That the undersigned makes the above statements for the purpose of including the Title Guaranty Division of the Iowa Finance Authority to issue its Lender and/or Owner Title Guaranty Certificate(s) with respect to the land described in the above Commitment and/or Certificate.
10. Any person or entity signing the affidavit who is also the mortgagor in a mortgage to be guaranteed under a Lender Certificate to be issued pursuant to the above Commitment to guarantee title attests that the mortgage and the principal obligations it secures are good and valid and free from all defenses; that any purchaser of the mortgage and its obligations may do so in reliance upon the truth of the matters herein recited; and that this affidavit is made for the purpose of better enabling the holder(s) from time to time, of the mortgage and obligations to sell, pledge or otherwise dispose of the same freely at any time, and to guarantee the purchasers or pledge thereof against any defenses thereto by the mortgagor or the mortgagor's heirs, personal representative or assigns.

Seller(s) or Owner(s):	Purchaser(s)
_____	_____
(Typed Name)	(Typed Name)
_____	_____
(Typed Name)	(Typed Name)

Subscribed and sworn before me, a Notary Public in and for \_\_\_\_\_ County and State of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

(Place notary stamp or seal here) Notary Public

Subscribed and sworn before me, a Notary Public in and for \_\_\_\_\_ County and State of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

(Place notary stamp or seal here) Notary Public

Note: Sellers and purchasers may complete separate affidavits. The affiants must fully read this affidavit, complete paragraphs 1 through 8 above and execute before a Notary Public.

### ***Section 4.11 Affidavit of No New Improvements***

If the requested lender coverage exceeds \$500,000.00, and/or the residential property covered by the guaranteed mortgage is 40 acres or more, a current drawing (often referred to as a Real Property Inspection Report, or “RPIR,” or Mortgage Survey) of the legal description showing dimensions, property lines, all improvements, building setback lines, easements, and encroachments must be sent with the Application for Title Guaranty. However, in many cases, especially on refinance transactions or if there is a prior Certificate on the property, no new improvements have been made on the property. For those instances, the Division has created the Affidavit of No New Improvements. The Affidavit of No New Improvements, executed by the borrower(s), shows the Division that no improvements have occurred on the property or adjacent properties since the last drawing was done.

There are two types of Affidavits. The Affidavit of No New Improvements Residential Real Property Inspection Report (2006) is to be used for a prior RPIR, and the Affidavit of No New Improvements Residential Survey (02/12/2003) is designed for use with a prior survey.

If either Affidavit of No New Improvements is to be used for a transaction, it must be filled out, dated, executed by the borrower(s), and notarized. If the Affidavit of No New Improvements discloses that improvements have been made to the property since the last transaction, contact the Division since an updated RPIR or survey may be required.

**AFFIDAVIT OF NO NEW IMPROVEMENTS  
RESIDENTIAL REAL PROPERTY INSPECTION REPORT (2006)**

STATE OF IOWA

COUNTY OF \_\_\_\_\_

Commitment: \_\_\_\_\_

The undersigned, being first duly sworn, deposes and states as follows:

1. I/We am/are the owner(s) of record described in the above referenced Commitment for title coverage.
2. I/We have not made or caused to be made any structural improvements or structural additions to existing improvements on the premises described in the above referenced Commitment since \_\_\_\_\_, except \_\_\_\_\_.
3. No structural improvements or additions to existing improvements were made on any adjacent property, which encroach however slight the encroachment may be, onto the premises described in the above referenced Commitment since \_\_\_\_\_, except \_\_\_\_\_.
4. I/We further state that the real property inspection report/drawing made by \_\_\_\_\_, dated \_\_\_\_\_, **(a copy of which is attached hereto and made a part hereof,)** is a correct and complete representation of all improvements now located on the premises in the above referenced Commitment and on all adjacent properties, except for \_\_\_\_\_. I/We have undertaken a complete and thorough investigation as to the condition of the premises and do not claim lack of knowledge or ignorance of fact should a difference, in fact, exist between the real property inspection report/drawing and the actual condition of the premises at the time of this affidavit.
5. This affidavit is given to the Title Guaranty Division, as an inducement to issue survey coverage on the **Lender Certificate** of title coverage to be applied for under the above Commitment, over questions of parties in possession, survey matters, and easements not shown of record.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Signature of Affiant

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 200\_\_

\_\_\_\_\_  
Notary Public

**NOTE:**

**This affidavit is to be used only for a refinance of a residential property (residential building with 6 units or less). If any disclosures are made then you should call the Division since an updated real property inspection report/drawing or survey may be required.**

**AFFIDAVIT OF NO NEW IMPROVEMENTS  
RESIDENTIAL SURVEY (02/12/2003)**

STATE OF IOWA  
COUNTY OF \_\_\_\_\_

Commitment No.: \_\_\_\_\_

The undersigned, being first duly sworn, deposes and states as follows:

1. I/We am/are the owner(s) of record described in the above referenced title opinion/commitment for title coverage.
2. I/We have not made or caused to be made any structural improvements or structural additions to existing improvements on the premises described in the above referenced title opinion/commitment since \_\_\_\_\_, except \_\_\_\_\_.
3. No structural improvements or additions to existing improvements were made on any adjacent property, which encroach however slight the encroachment may be, onto the premises described in the above referenced title opinion/commitment since \_\_\_\_\_, except \_\_\_\_\_.
4. I/We further state that the survey made by \_\_\_\_\_, dated \_\_\_\_\_, **(a copy of which is attached hereto and made a part hereof,)** is a correct and complete representation of all improvements now located on the premises in the above referenced title opinion/commitment and on all adjacent properties, except for \_\_\_\_\_. I/We have undertaken a complete and thorough investigation as to the condition of the premises and do not claim lack of knowledge or ignorance of fact should a difference, in fact, exist between the survey and the actual condition of the premises at the time of this affidavit.
5. This affidavit is given to the Title Guaranty Division, as an inducement to issue survey coverage on the Lender Certificate of title coverage to be applied for under the above commitment, over questions of parties in possession, survey matters, and easements not shown of record.

Dated: \_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Signature of Affiant

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 200\_

\_\_\_\_\_  
Notary Public

**NOTE: If any disclosures are made then you should call the Division since an updated survey may be required.**

### ***Section 4.12 Residential Mechanic's Lien Affidavit***

For residential transactions in which new construction has taken place, or repairs or improvements have been made to the property, the Division requires copies of all lien waivers executed by all general contractors, subcontractors, and materialmen in order to issue a Certificate with mechanic's lien coverage. Sometimes, however, obtaining all of the lien waivers is not feasible. This is where the Residential Mechanic's Lien Affidavit comes in.

The Division will accept a properly executed Residential Mechanic's Lien Affidavit in lieu of the lien waivers so that mechanic's lien coverage can be given. This Affidavit shall be executed by a Participating Attorney or Participating Abstractor. In order to execute the Residential Mechanic's Lien Affidavit, a mechanic's lien search of the clerk of court's records, in the county where the property is located, must be performed. The Residential Mechanic's Lien Affidavit should show the following information:

1. The address of the property.
2. The name(s) of the titleholder(s).
3. The legal description of the property that was searched.
4. The county where the property is located.
5. The date the search was done.
6. The signature of the person doing the search.

The search must be dated at least 90 days after the date upon which all construction was completed, and the search should disclose no mechanic's lien claims of record. Please note that if the search discloses a mechanic's lien, the closer may have to remove the lien before Title Guaranty coverage may be issued. Contact the Division for further assistance.

The Residential Mechanic's Lien Affidavit is shown on the next page.

## Residential Mechanic's Lien Affidavit

Re: \_\_\_\_\_  
Property Address

\_\_\_\_\_  
Titleholder(s)

Dear Title Guaranty Division:

I have examined the property records for

[enter legal description here]

at the Clerk of Court Office in \_\_\_\_\_ County, Iowa, and report that there  
are no mechanics' liens filed against the above described legal description as of  
\_\_\_\_\_.

\_\_\_\_\_  
(Authorized Signature)

Please fax to: (515) 725-4901

Or mail to: Title Guaranty Division  
2015 Grand Avenue  
Des Moines, IA 50312

### ***Section 4.13 Post-Closing Search Certification***

The Participating Abstractor is required to have an “updated title plant” for abstracting unless waived from that requirement pursuant to Iowa Code Section 16.91(5). The definition of an abstract is defined in 265 IAC 9.3 as “...a written or electronic summary of all matters ...” Iowa Code Section 16.91(6) applies to the issue of what is needed for abstract updating:

*Prior to the issuance of a title guaranty, the division shall require evidence that an abstract of title to the property in question has been brought up-to-date and certified by a participating abstractor in a form approved by division rules and a title opinion issued by a participating attorney in the form approved in the rules stating the attorney’s opinion as to the title. The division shall require evidence of the abstract being brought up-to-date and the abstractor shall retain evidence of the abstract as determined by the board.*

In other words, the Division rules guide what form of abstract update is required. Further, evidence of the abstracting shall be retained by the Participating Abstractor in a form determined by the Division Board.

*265 IAC 9.6 (4) Abstract of title.*

- a. Preparation. An abstract of title shall be brought up to date and certified by a participating abstractor prior to the issuance of a title guaranty certificate.*
- b. Compliance. All abstracts of title shall be prepared and conducted in compliance with division procedures in effect at the time of the updating of the abstract. A participating abstractor shall retain a written or electronic copy of each abstract of title prepared for a title guaranty certificate and shall provide such copy to the division upon request.*

The above rules simply states the abstract shall be brought up-to-date using Division procedures prior to issuing Commitments and Certificates. Traditionally formal abstract certification was used for the pre- and post closing of a transaction. As the market has demanded shorter search times and more efficiency in search methods, new creative search methods have been used, (i.e. refinance Forms 900 and 901). Furthermore when a Division Closing Protection Letter is part of the transaction, a post-closing verification of recordings is permitted.

The Division understands that non-Closing Protection Letter Participants may be competitively disadvantaged by having to wait for an updated abstract certification. Therefore, this Manual has been revised to include a Post-Closing Search Certification (PCS) that may be relied upon by the Participating Attorney to issue a final title opinion or Certificate.

Usage of post-closing searches by all of our Participants allows Certificates to be available for more transactions thereby preserving the integrity of the Iowa abstract/attorney system. Use of a PCS allows for a simple and accurate verification of post-closing information. Additionally, the abstract may be promptly delivered at the closing table to the titleholder. Ideally, an updated abstract certification would be the preferred search method, if possible. But when updating the abstract is not feasible and the post-closing search is employed, you should remind your customer to formally update their abstract to show their vesting of title when they encumber or sell their property in the future.

Various Participating Abstractors already produce a post-closing search certification to show recording information and documents from a real estate transaction. After reviewing such forms

being used in the State of Iowa, the Division has adopted a suggested form or sample, the Post-closing Search Certification, which adopts minimum requirements for a post-closing search. (Refer to the form attached at the end of this section.) Similar to an updated abstract certification, Form 900, and Form 901, the post-closing search certification must be retained by the Participating Abstractor so that a written or electronic copy thereof may be provided to the Division upon request.

The Division recognizes that the post-closing search certification may disclose judgments or other miscellaneous matters not previously examined and cleared by the Participating Attorney. The Participating Attorney may use his/her discretion to require the Participating Abstractor to provide more information regarding these additional matters shown in the post-closing search certification.

Participants should remember that the requirements for gap coverage and the closing protection letter are not being changed by allowing an informal post-closing search certification. The sole use of the post-closing search certification, without the issuance of a Commitment including the Gap Endorsement and the Division Closing Protection Letter, would not omit the need for the parties to cure a title problem found in the gap period or cause closing protection letter liability against the Division.

# ***SAMPLE***

[Abstractor Name]  
[Contact Information]  
[Title Guaranty Number]

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## **POST-CLOSING SEARCH CERTIFICATION**

**ADDRESS OF PROPERTY:**

**LEGAL DESCRIPTION:**

**ABSTRACT NUMBER:**

**DATE AND TIME OF PRIOR CERTIFICATION:**

**TITLEHOLDERS:**

**CURRENT TAX STATUS:**

**NEW RECORDINGS FILED:**

Deed in Book:	Page:	Time:
Mortgage in Book:	Page:	Time:
Assignment in Book:	Page:	Time:
Release in Book:	Page:	Time:

(Copies attached, if needed)

**OTHER DOCUMENTS AFFECTING TITLE (IF ANY):**

**DATE AND TIME OF THIS CERTIFICATION COVERING THE NEW RECORDINGS:**

The undersigned, acting in its capacity as an Abstractor in the State of Iowa, certifies that the appropriate searches have been made against the titleholders and buyers and that no matters affecting the title to the property described above have been recorded against the property since the date of the prior certification other than what is disclosed on this certificate.

---

By: \_\_\_\_\_  
Authorized Signature

---

## **Article V: Endorsements and Instructions to Issue**

In addition to the Certificates, a number of Endorsements are available for modifying (usually expanding) the coverage under a Certificate. The use of each Endorsement requires compliance with certain underwriting standards, procedures, and requirements, which are discussed more fully in Article VII, "Underwriting."

Some Endorsements, such as the Variable Rate Mortgage Endorsement, are available for use with the Lender Certificate but may not be issued in connection with the Owner Certificate. Other Endorsements, such as the Standard Exception Waiver Endorsement, are available for use with the Owner Certificate but may not be issued in connection with the Lender Certificate.

Situations may arise in which additional coverage is desired but is not available through one of the standard Endorsements offered by the Division. Special Endorsements may be available but may not be written without the express consent of the Division. If a Special Endorsement is desired, the Field Issuer should contact the Division.

Each Endorsement form cross-references the Certificate which it amends. Each Endorsement is signed by the Field Issuer and should be inserted in the Certificate jacket behind Schedules A and B.

Some of the more commonly used Endorsements offered by the Division, along with the description, instructions, and an explanation of why a lender or owner of property might wish to purchase the Endorsement, are included in this Article.

## ***Section 5.01 Balloon Mortgage Endorsement***

### **Instructions**

The Balloon Mortgage Endorsement covers a lender against the invalidity or unenforceability of the Guaranteed Mortgage which may result from an attached Fannie Mae or Freddie Mac balloon rider. It also covers against the loss of priority of the Guaranteed Mortgage due to the balloon rider as long as the conditions of paragraphs 2 and 5 of the rider have been met, and there are no other adverse matters affecting title that arise after the Date of Certificate.

This Endorsement may only be issued with a Lender Certificate. The Field Issuer may issue this Endorsement if the covered mortgage has attached to it either:

1. Fannie Mae's Form 3180, the Multi-State Balloon Rider with Conditional Right to Refinance, or
2. Freddie Mac's Form 3191, the Multi-State Balloon Rider with Conditional Right to Refinance.



## Balloon Mortgage Endorsement

### **Certificate Number:**

The Division hereby guarantees against loss or damage by reason of:

(1) The invalidity or unenforceability of the lien of the Guaranteed Mortgage resulting from the provisions therein which provide for a Conditional Right to Refinance and a change in the rate of interest as set forth in the Mortgage Rider.

(2) Loss of priority of the lien of the Guaranteed Mortgage as security for the unpaid principal balance of the loan, together with interest thereon, which loss of priority is caused by the exercise of the Conditional Right to Refinance and the extension of the loan term to the New Maturity Date set forth on the Rider and a change in the rate of interest provided all the conditions set forth in Paragraphs 2 and 5 of the Rider have been met, further provided no coverage is given by this paragraph with respect to any lien, encumbrance or other matter the existence of which is actually known to the Guaranteed prior to the exercise of the Conditional Right to Refinance.

The Endorsement does not guarantee against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth-in-lending law or (c) environmental protection liens or (d) federal tax liens or (e) bankruptcy.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any other prior endorsements.

## *Section 5.02 Comprehensive 1 – Improved Land Endorsement*

### **Instructions**

The Comprehensive 1 – Improved Land Endorsement may be attached to a Lender Certificate covering a non-construction loan. As its name indicates, this form guarantees against a much broader range of possible defects than does the standard Lender Certificate. **When comprehensive coverage is required, issue the Comprehensive 1 Endorsement unless the lender specifically asks for the ALTA 9 Endorsement which is the Division's Comprehensive 2 Endorsement.**

This Endorsement assures the lender that:

1. There are no covenants, conditions, or restrictions which may cut off its mortgage lien.
2. There are no present violations of any enforceable covenants, conditions or restrictions unless shown on Schedule B.
3. There are no encroachments by improvements from the covered property onto adjoining property, nor any encroachments by improvements from adjoining property onto the covered property, unless disclosed on Schedule B.
4. No loss will be suffered due to future violations of any covenants, conditions, or restrictions occurring prior to acquisition of title by the lender by foreclosure or otherwise.
5. Losses caused by damage to existing improvements because of their encroachment onto easements identified on Schedule B will be covered.
6. Disclosed encroachments upon adjoining land will be covered if a court judgment requires removal.

Examine executed Composite Mortgage Affidavits including all covenants, restrictions, covenants, easements, building setbacks and subdivision plats before issuing this endorsement.

For a property with new or recent construction where the coverage amount is \$500,000 or less, obtain an Appraisal showing no possible encroachments, or a Real Property Inspection Report (or survey) showing the boundary lines, the location of any improvements relative to the property lines, easements, building setback lines, property dimensions.

For a residential property where the coverage amount is over \$500,000, obtain a Real Property Inspection Report or survey showing the boundary lines, the location of all improvements relative to the property lines, easements, building setback lines, and property dimensions.

For a commercial property, obtain a survey made in accordance with the "Minimum Standard Detail Requirements for Land Title Surveys as adopted by the American Title Association Congress on Surveying and Mapping."

If there is any present violation of any covenant, condition or restriction or if there is any encroachment of the subject improvements onto easements, building setbacks or adjoining property, or any encroachment of neighboring improvements onto the guaranteed land, specifically raise those violations and encroachments as Exceptions on Schedule B – Part I.

To determine whether it is appropriate to issue this Endorsement when there is a known encroachment, thereby providing blanket encroachment coverage by paragraph 4 of the

Endorsement, please refer to the Underwriting section of the Title Guaranty Manual regarding encroachments.

If the Guaranteed Mortgage priority lien status could be cut off or subordinated by a covenant, condition or restriction, obtain a termination, release or subordination of said covenant, condition or restriction.



## Comprehensive 1 – Improved Land Endorsement

### Certificate Number:

The Division guarantees the Guaranteed against loss or damage sustained by the Guaranteed by reason of:

1. Any incorrectness in the assurance which the Division hereby gives:
  - a. That there are no covenants, conditions, or restrictions under which the lien of the Guaranteed Mortgage can be cut off, subordinated, or otherwise impaired;
  - b. That, except as shown in Schedule B, there are no present violations on the Land of any enforceable covenants, conditions, or restrictions;
  - c. That, except as shown in Schedule B, there are no encroachments of buildings, structures, or improvements located on the Land onto adjoining lands, nor any encroachments onto the Land of buildings, structures, or improvements located on adjoining lands.
2. Any violations on the land of any covenants, conditions or restrictions occurring prior to acquisition of title to the Land by the Guaranteed, provided such violations result in loss or impairment of the lien of the Guaranteed Mortgage, or result in loss or impairment of the title to the Land if the Guaranteed shall acquire such title in satisfaction of the indebtedness secured by the Guaranteed Mortgage.
3. Damage to existing improvements that are located or encroach upon that portion of the Land subject to any easement shown in Schedule B, which damage results from the exercise of the right to use or maintain such easement for the purpose for which the same was granted or reserved.
4. Any final court order or judgment requiring removal from any land adjoining the Land of any encroachment shown in Schedule B.

Wherever in this Endorsement any or all the words “covenants, conditions or restrictions” appear, they shall not be deemed to refer to or include the terms, covenants and condition or limitations contained in any lease, instrument creating an easement or declaration of condominium referred to in Schedule A.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

***Section 5.03 Comprehensive 2 – Lender’s Restrictions, Encroachments,  
Minerals ALTA Endorsement 9-06***

## **Instructions**

**When specifically requested by the lender**, the Comprehensive 2 Endorsement is used for a Lender Certificate which covers residential **improved** property.

This Endorsement is **not** to be used when the loan covers vacant land, any type of construction, unsubdivided land or land platted by county auditor, or land where mining operations are active and surface rights are in current use.

Division underwriter approval is required to issue this Endorsement for commercial land or to alter this Endorsement in any manner. The Division recommends the use of the Comprehensive 1 Endorsement whenever possible.

It is the Division’s practice to agree to issue this Endorsement at the time of the mortgage recording/closing and **not issue this Endorsement at a later date.**

Examine executed Composite Mortgage Affidavits including all agreements, restrictions and covenants including those in deeds and subdivision plats before issuing this Endorsement.

For a property with new or recent construction where the coverage amount is \$500,000 or less, obtain an Appraisal showing no possible encroachments, or a Real Property Inspection Report (or survey) showing the boundary lines, the location of any improvements relative to the property lines, easements, building setback lines, and property dimensions.

For a residential property where the coverage amount is over \$500,000.00, obtain a Real Property Inspection Report or survey showing the boundary lines, the location of all improvements relative to the property lines, easements, building setback lines, and property dimensions.

For a commercial property, obtain a survey made in accordance with the “Minimum Standard Detail Requirements for Land Title Surveys as adopted by the American Title Association Congress on Surveying and Mapping.”

**Specifically and separately list all covenants, conditions, restrictions, easements, options, rights, assessments and liens on Schedule B – Part I**, and if there is any present violation of any of these listed items, or if there is any encroachment of the subject improvements onto easements, building setbacks, adjoining property, or any encroachment of neighboring improvements onto the guaranteed land, **specifically list those violations and encroachments on Schedule B – Part I**. Please refer to the Underwriting section of the Title Guaranty Manual concerning encroachments and extended coverage for Division requirements.

**Please comply with the following procedures when issuing the Comprehensive 2 Endorsement:**

1. Coverage in paragraph 1(a) may be provided when one or more of the following circumstances exist:

- a. There are no agreements, covenants, conditions, or restrictions (including those benefiting a governmental entity) which restrict use, occupancy or division of ownership.
  - b. All of the agreements, covenants, conditions and restrictions are, by their terms, totally expired or barred by the Stale Uses and Reversions Act, in which case they can be deleted from Schedule B of the certificate.
  - c. The restrictions have been imposed in a deed or declaration as covenants only, without express provision for reversion, and without the use of the word “condition(s)” in relation to their imposition, which could imply a reversion.
  - d. The deed or declaration contains language providing good faith protection to the mortgagee or a subordination clause protecting the lien of a lender in good faith and for value against violation of the covenants, conditions and restrictions. If not, then you may need to obtain a release or termination.
  - e. The covenants, conditions and restrictions expressly provide for reversion, or they are imposed by an instrument using the word “condition(s)” thereby implying the existence of a reversion, and there is no good faith or subordination clause in the instrument of imposition, but a subordination of the reversion to the lien of the mortgage has been provided by a separate agreement executed by the owner of the reversion.
2. Coverage in paragraph 1(b)(i) may be provided if known violations of any covenants, conditions, restrictions or building setback lines are shown in Schedule B – Part I.
  3. Coverage in paragraph 1(b)(ii) may be provided if all covenants, conditions, and restrictions are shown on Schedule B – Part I, and said covenants, conditions and restrictions are examined and specific reference is further made in Schedule B for the (a) easements, (b) liens for liquidated damages, (c) private charges or assessments, (d) options to purchase, (e) rights of first refusal, or (f) prior approval of future purchasers or occupants.
  4. Coverage in paragraph 1(b)(iii) may be provided if all known encroachments are shown as Schedule B – Part I Exceptions.
  5. Coverage in paragraph 1(b)(iv) may be provided if all known encroachments are shown as Schedule B – Part I Exceptions.
  6. Coverage in paragraph 1(b)(v) may be provided if all recorded notices of violations are shown as Schedule B – Part I Exceptions.
  7. Coverage in paragraph 2 may be provided when one or more of the following circumstances exist:
    - a. There are no agreements, covenants, conditions, or restrictions (including those benefiting a governmental entity) which restrict use, occupancy or division of ownership.
    - b. All of the agreements, covenants, conditions and restrictions are, by their terms, totally expired or barred by the Stale Uses and Reversions Act, in which case they can be deleted from Schedule B of the Certificate.
    - c. The restrictions have been imposed in a deed or declaration as covenants only, without express provision for reversion, and without the use of the word “condition(s)” in relation to their imposition, which could imply a reversion.
    - d. The deed or declaration contains language providing good faith protection to the mortgagee or a subordinate clause protecting the lien of a lender in good faith and for value against violation of the covenants, conditions and restrictions. If not, then you may need to obtain a release or termination.
    - e. The covenants, conditions and restrictions expressly provide for reversion, or they are imposed by an instrument using the word “condition(s)” thereby implying the existence of a reversion, and there is no good faith or subordination clause in the instrument of imposition, but a subordination of the reversion to the lien of the mortgage has been provided by a separate agreement executed by the owner of the reversion.
  8. Coverage in paragraph 3(a) may be provided when one or more of the following circumstances exist:

- a. No easements affect the property in question.
- b. You have no knowledge that the existing improvements encroach upon any easement affecting the property in question.
- c. Improvements encroach over less than one half of the width of the easement.

**REQUIREMENT: If a larger encroachment exists, Division approval is required.**

Please provide the following information so that the Division can make a decision regarding easement coverage: fixed or not located, purpose of, possibility of exercise of the easement, extent of damage if easement exercised, will damage occur from its maintenance, does improvement interfere with the exercise of the easement.

9. Coverage in paragraph 3(b) may be provided when one or more of the following circumstances exists:

- a. No mineral exceptions or reservations affect the property in question.
- b. Review of all mineral exceptions or reservations disclose that all rights of surface entry have been expressly waived.

**REQUIREMENT: Delete paragraph 3(b) or seek Division underwriter approval if there are mineral or reservations affecting the property and all rights of surface entry have not been expressly waived.**

10. Coverage in paragraph 4 may be provided when one of the following circumstances exists:

- a. No known encroachment exists on the property in question.
- b. The provisions contained in the Underwriting section of the Title Guaranty Manual concerning encroachments and extended coverage allow this endorsement to be issued.

11. Coverage in paragraph 5 may be provided when one or more of the following circumstances exist:

- a. No covenants, conditions, restrictions or building setback lines affect the property in question.
- b. No known violations of covenants, conditions, restrictions or building setback lines exist.
- c. The provisions contained in the Underwriting section of the Title Guaranty Manual concerning encroachments and extended coverage allow this endorsement to be issued.
- d. Rights of enforcement with respect to any violation have been released of record by the persons or entities entitled to enforce the restrictions.



## Comprehensive 2 – Lender's Restrictions, Encroachments, Minerals ALTA Endorsement 9-06

### Certificate Number:

The Division guarantees the owner of the Indebtedness secured by the Guaranteed Mortgage against loss or damage sustained by reason of:

1. The existence, at Date of Certificate, of any of the following:
  - a. Covenants, conditions, or restrictions under which the lien of the Guaranteed Mortgage can be divested, subordinated, or extinguished, or its validity, priority, or enforceability impaired.
  - b. Unless expressly excepted in Schedule B
    - i. Present violations on the Land of any enforceable covenants, conditions, or restrictions, or existing improvements on the land described in Schedule A that violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.
    - ii. Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (A) establishes an easement on the Land, (B) provides a lien for liquidated damages, (C) provides for a private charge or assessment, (D) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant.
    - iii. Any encroachment of existing improvements located on the Land onto adjoining land, or any encroachment onto the Land of existing improvements located on adjoining land.
    - iv. Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.
    - v. Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.
2. Any future violation on the Land of any existing covenants, conditions, or restrictions occurring prior to the acquisition of title to the estate or interest in the Land by the Guaranteed, provided the violation results in:
  - a. the invalidity, loss of priority, or unenforceability of the lien of the Guaranteed Mortgage, or
  - b. the loss of Title if the Guaranteed shall acquire Title in satisfaction of the Indebtedness secured by the Guaranteed Mortgage
3. Damage to existing improvements, including lawns, shrubbery, or trees:
  - a. that are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;

b. resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

4. Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment excepted in Schedule B.

5. Any final court order or judgment denying the right to maintain any existing improvements on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.

Wherever in this endorsement the words “covenants, conditions, or restrictions” appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1.b.i. and 5, the words “covenants, conditions, or restrictions” do not include any covenants, conditions, or restrictions (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Certificate and is not excepted in Schedule B.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.04 Comprehensive 6 – Restrictions***

### **Instructions**

The Field Issuer may issue this Endorsement on either an Owner Certificate or a Lender Certificate. The Restrictions Endorsement provides that any right of re-entry, forfeiture or reversion of title based upon a violation of specified recorded covenant(s), condition(s) and restriction(s) (CCR's) is not enforceable and guarantees against loss or damage for any exercise of attempt to exercise those rights.

In order to issue the Endorsement, examine the CCR's to determine that any right of re-entry, forfeiture or reversion of title based upon a violation of them is legally unenforceable.

Reference the paragraph number of the CCR(s) that are being covered on the Endorsement.



## Comprehensive 6 – Restrictions Endorsement

### **Certificate Number:**

The Title Guaranty Division guarantees the Guaranteed against actual loss or damage sustained by the Guaranteed by reason of:

1. Any inaccuracies in the following assurances:

Any right of re-entry or right of forfeiture or reversion of Title to the estate or interest referred to in Schedule A contingent on a violation of the covenants, conditions or restrictions referred to in exception(s) No(s). 4 is(are) not enforceable.

2. The exercise or attempt to exercise any right of re-entry, forfeiture or reversion or other right of termination of Title to said estate or interest based on a violation of said covenants, conditions or restrictions disclosed in paragraph 1 above.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.05 Condominium – Lender***

### **Instructions**

The Condominium – Lender Endorsement may be used with the Lender Certificate. As the name implies, the Condominium Endorsement is issued only where one or more condominium units are properly created by legal description.

Paragraphs 1 and 2 of the Condominium Endorsement guarantee that the property set forth in Schedule A is in fact condominium property validly created subject to the Horizontal Property Act. The documentation creating the subject condominium estate must be reviewed with the Horizontal Property Act to be able to make this statement.

Paragraph 3 of the Endorsement guarantees that there are no present violations of any building and use restrictions referred to in the condominium declaration and that any present or future violation will not give rise to a forfeiture or reversion of title. The condominium bylaws and declaration must be reviewed to verify that any violation of building and use restrictions contained therein will not result in a forfeiture or reversion of the title to the condominium unit.

Paragraph 4 guarantees against loss or damage as a result of any charges or assessments provided for in the condominium statute and documents that are due and unpaid at the Date of Certificate. Before issuing this Endorsement, the Field Issuer must determine that any lien for charges and assessments provided for in the condominium statute and documentation is specifically subordinate to the guaranteed mortgage. If the charges and assessments are superior to the mortgage covered, a statement should be obtained from the condominium association stating that there are no unpaid charges or assessments through the Date of Certificate.

Paragraph 5 guarantees that the property listed in Schedule A is a separate taxable entity for the purpose of imposing liens of real property taxes, special assessments, and other state and local charges. The abstract must disclose that the condominium unit and its percentage interest in the common elements are being separately assessed for property taxes, special assessments, and other state and local charges.

Paragraph 6 guarantees against any loss or damage sustained due to encroachments by existing improvements, including unintentional encroachments of the common elements upon any unit or of any unit upon the common elements or another unit. You should refer to the Underwriting section of the Title Guaranty Manual regarding encroachments for guidance in obtaining survey clearance for this Endorsement.

Paragraph 7 provides protection against any loss or damage arising by reason of the failure of title due to the exercise of a right of first refusal which could have been exercised at the Date of Certificate. If applicable, a statement should be obtained from the condominium association indicating that the right of first refusal has been waived or has been exercised.



## Condominium – Lender ALTA Endorsement 4-06

### **Certificate Number:**

The Division guarantees against loss or damage sustained by the Guaranteed by reason of:

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents. The restrictive covenants do not contain any provisions that will cause a forfeiture or reversion of the Title. As used in this paragraph 3, the words “restrictive covenants” do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Certificate and is not excepted in Schedule B.
4. The priority of any lien for charges and assessments at Date of Certificate provided for in the condominium statutes and condominium documents over the lien of any Guaranteed Mortgage identified in Schedule A.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at Date of Certificate because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements that was exercised or could have been exercised at Date of Certificate.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.06 Condominium – Owner ALTA Endorsement 4.1-06***

### **Instructions**

The Condominium – Owner Endorsement may be used with an Owner Certificate. As the name implies, the Condominium Endorsement is issued only where one or more condominium units are properly created by legal description.

Paragraphs 1 and 2 of the Condominium Endorsement guarantee that the property set forth in Schedule A is in fact condominium property validly created subject to the Horizontal Property Act. The documentation creating the subject condominium estate must be reviewed with the Horizontal Property Act to be able to make this statement.

Paragraph 3 of the Endorsement guarantees that there are no present violations of any building and use restrictions referred to in the condominium declaration and that any present or future violation will not give rise to a forfeiture or reversion of title. The condominium bylaws and declaration must be reviewed to verify that any violation of building and use restrictions contained therein will not result in a forfeiture or reversion of the title to the condominium unit.

Paragraph 4 guarantees against loss or damage as a result of any charges or assessments provided for in the condominium statute and documents that are due and unpaid at the Date of Certificate. Before issuing this Endorsement, the Field Issuer must determine that any lien for charges and assessments provided for in the condominium statute and documentation is specifically subordinate to the guaranteed deed. If the charges and assessments are superior to the deed covered, a statement should be obtained from the condominium association stating that there are no unpaid charges or assessments through the Date of Certificate.

Paragraph 5 guarantees that the property listed in Schedule A is a separate taxable entity for the purpose of imposing liens of real property taxes, special assessments, and other state and local charges. The abstract must disclose that the condominium unit and its percentage interest in the common elements are being separately assessed for property taxes, special assessments, and other state and local charges.

Paragraph 6 guarantees against any loss or damage sustained due to encroachments by existing improvements, including unintentional encroachments of the common elements upon any unit or of any unit upon the common elements or another unit. You should refer to the Underwriting section of the Title Guaranty Manual regarding encroachments for guidance in obtaining survey clearance for this Endorsement.

Paragraph 7 provides protection against any loss or damage arising by reason of the failure of title due to the exercise of a right of first refusal which could have been exercised at the Date of Certificate. If applicable, a statement should be obtained from the condominium association indicating that the right of first refusal has been waived or has been exercised.

**Certificate Number:**

The Division guarantees against loss or damage sustained by the Guaranteed by reason of:

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents. The restrictive covenants do not contain any provisions that will cause a forfeiture or reversion of the Title. As used in this paragraph 3, the words “restrictive covenants” do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Certificate and is not excepted in Schedule B.
4. Any charges or assessments provided for in the condominium statutes and condominium documents due and unpaid at Date of Certificate.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at Date of Certificate because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements that was exercised or could have been exercised at Date of Certificate.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## *Section 5.07 Encroachment Endorsement – Adverse*

### **Instructions**

This Endorsement is **only available with the Lender Certificate** and guarantees against loss sustained by the guaranteed mortgagee by reason of an adverse encroachment, which is an encroachment of a neighboring improvement onto the guaranteed premises.

When an adverse encroachment is suspected or known, obtain and inspect a current survey or real property inspection report (depending upon the type of property and the amount of coverage). Please contact a Title Guaranty underwriter for pre-approval to issue this Endorsement.

On the Encroachment Endorsement – Adverse, reference the Schedule B – Part I Exception number(s) for the adverse encroachment(s) that are being guaranteed against.



## Encroachment Endorsement – Adverse

### **Certificate Number:**

The Title Guaranty Division guarantees the Guaranteed against actual loss or damage sustained by the Guaranteed by reason of the adverse encroachment raised in Schedule B as Exception Number(s) \_\_\_\_\_.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.08 Encroachment Endorsement***

### **Instructions**

This Encroachment Endorsement is used to affirmatively guarantee against loss sustained due to encroachments of improvements located on the guaranteed premises beyond the boundaries of the guaranteed premises or beyond setback lines or recorded easements. This Endorsement is NOT appropriate when improvements located on adjacent property encroach on the guaranteed property (adverse encroachment). For adverse encroachments of neighboring properties, refer to the Encroachment Endorsement – Adverse for use with the Lender Certificate only.

When an encroachment is suspected or known, obtain and inspect a current survey or real property inspection report (depending upon whether an Owner Certificate and/or Lender Certificate is being issued, the type of property and the amount of coverage).

Upon compliance with all applicable standards, procedures and requirements set forth in the discussion of encroachments in the Underwriting section of the Title Guaranty Manual, the Encroachment Endorsement may be issued. On the Encroachment Endorsement, reference the Schedule B – Part I Exception number(s) for the encroachment(s) that is (are) being guaranteed against.



## Encroachment Endorsement

### **Certificate Number:**

The Title Guaranty Division guarantees the Guaranteed against actual loss or damage sustained by the Guaranteed by reason of any final judgment or decree by a court of competent jurisdiction denying the right to maintain the improvements as now located on the Land, beyond the boundaries of the property described in Schedule A hereof, or in violation of any building set-back line, or easement mentioned in Schedule B hereof because of the encroachment raised in Schedule B as Exception Number(s) \_\_\_\_\_.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.09 Endorsement Against Loss-Lien***

### **Instructions**

This Endorsement is available on field-issued Lender and Owner Certificates and used in conjunction with the Rapid Certificate Program. The purpose of this Endorsement is to guarantee against actual loss or damage sustained because of the enforcement of a lien against the Land.

For example, this Endorsement may be used to guarantee over an unreleased mortgage, judgment or lien. To issue this Endorsement, list the lien as an exception on Schedule B and reference the paragraph number of the lien on the Endorsement. A separate Endorsement Against Loss – Lien must be issued for each lien covered.

For Mortgages: The Field Issuer must have available for review:

A. A “Payoff Statement” showing the unpaid balance of the loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, the amount required to be paid, interest on a per-day basis, and the address where payment is to be sent or other specific instructions for making a payment. If the payoff statement is for a partial release of mortgage it must include the legal description of the property that will be released from the mortgage.

B. A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer or other documentary evidence satisfactory to the Division of payment to the mortgagee or mortgage servicer. Wiring instructions and a receipt of wire transmittal for payments made by wire is also acceptable.

All Other Liens: The Field Issuer must have in his/her physical possession written documentation evidencing the payoff amount of the lien and proof that the lien was paid off, i.e. cancelled check or wire receipts.



## Endorsement Against Loss-Lien

### **Certificate Number:**

The Division guarantees the Guaranteed against actual loss or damage sustained by the Guaranteed by reason of the enforcement of the lien excepted at No. \_\_\_\_\_ of Schedule B so as to secure full or partial satisfaction there of out of the Land as a lien encumbering or having priority over the Guaranteed Mortgage or estate guaranteed by this Certificate, as well as costs, attorney fees, and expenses in defense against such encumbrance as provided in the Conditions of this Certificate.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.10 Environmental Protection Lien ALTA Endorsement 8.1-06***

### **Instructions**

The Environmental Protection Lien Endorsement is only issued in conjunction with a Lender Certificate covering land used for a single family home or a residential building containing up to six residential units.

The Endorsement guarantees the lender that its lien will not lose priority to any federal or state environmental protection lien recorded at the date of Certificate. Title Guaranty excludes Iowa Code section 455B.396 from coverage, which may provide for a superior lien.

Abstractors are required to search the available lien indexes to discover environmental liens. The Division does not require a search of the federal court records unless a federal court is located within the county being searched. If the abstract/search reveals an environmental lien, the Field Issuer shall raise such lien as an Exception on Schedule B – Part I.



## Environmental Protection Lien ALTA Endorsement 8.1-06

### **Certificate Number:**

The coverage afforded by this Endorsement is effective only if the Land is used or is to be used for a single family home or a residential building containing up to six residential units.

The Division guarantees against loss or damage sustained by the Guaranteed by reason of lack of priority of the lien of the Guaranteed Mortgage over

(a) any environmental protection lien which, at Date of Certificate, is recorded in those records established under state statutes at Date of Certificate for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or is filed in the records of the clerk of the United States district court for the district in which the Land is located, except as set forth in Schedule B, or

(b) any environmental protection lien provided for by any state statute in effect at Date of Certificate, except environmental protection liens provided for by the following state statutes:  
455B.396

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.11 Form E – Lender Endorsement***

### **Instructions**

This Endorsement may be used to amend Certificates to:

1. Correct simple typographical errors in name spellings;
2. Correct simple typographical errors in legal descriptions; and,
3. Change level of coverage.

Sometimes this Endorsement is used to update the Certificate date when a title problem is being corrected. When a Closing Protection Letter has not been issued, the abstract and title opinion (unless the participating attorney is issuing the Form E in lieu of his/her opinion) should be updated. A more current Composite Mortgage Affidavit, appraisal/real property inspection report or survey (or update thereof), or other documentation may be needed for various endorsements when providing “extended” coverage in the Certificate.

If you are asked to provide new endorsement language, call a Title Guaranty underwriter for approval before issuing the Form E Endorsement with that language.

Complete this Endorsement by inserting the amendment(s) to the Certificate in the appropriate blank or area on the Endorsement.



## Form E – Lender Endorsement

### **Certificate Number:**

Guaranteed: \_\_\_\_\_

Amount of Coverage: \_\_\_\_\_

Effective Date of Certificate: \_\_\_\_\_

The above Certificate is amended as follows:

(Insert amendments)

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.12 Form E – Owner Endorsement***

### **Instructions**

This Endorsement may be used to amend Certificates to:

1. Correct simple typographical errors in name spellings;
2. Correct simple typographical errors in legal descriptions; and,
3. Change level of coverage.

Sometimes this Endorsement is used to update the Certificate date when a title problem is being corrected. When a Closing Protection Letter has not been issued, the abstract and title opinion (unless the participating attorney is issuing the Form E in lieu of his/her opinion) should be updated. A more current Composite Mortgage Affidavit, appraisal/real property inspection report or survey (or update thereof), or other documentation may be needed for various endorsements when providing “extended” coverage in the Certificate.

The effective date of an Owner Certificate should not be updated unless there is a major change to the property such as new construction.

If you are asked to provide new endorsement language, call a Title Guaranty underwriter for approval before issuing the Form E Endorsement with that language.

Complete this Endorsement by inserting the amendment(s) to the Certificate in the appropriate blank or area on the Endorsement.



## Form E – Owner Endorsement

### **Certificate Number:**

Guaranteed: \_\_\_\_\_

Amount of Coverage: \_\_\_\_\_

Effective Date of Certificate: \_\_\_\_\_

The above Certificate is amended as follows:

(Insert amendments)

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

### ***Section 5.13 Future Advance – Priority ALTA Endorsement 14-06***

## **Instructions**

This Endorsement is used with a Lender Certificate to guaranty a mortgage that secures a future advance or a revolving line of credit.

The Field Issuer may issue this Endorsement provided:

1. The guaranteed mortgage states that it secures future advances to be made under the loan agreement.
2. The advances are obligatory under the loan agreement.
3. The statutory notice regarding priority of advances prescribed in Iowa Code Section 654.12A is contained in the recorded guaranteed mortgage.
4. The amount of coverage should include the future advances.



## Future Advance – Priority ALTA Endorsement 14.06

### **Certificate Number:**

1. The coverage for Advances added by Sections 2 & 3 of this Endorsement is subject to the exclusions in Section 4 of this Endorsement and the Exclusions from Coverage in the Certificate, except Exclusion 3(d), the provisions of the Conditions, and the exceptions contained in Schedule B.

a. “Agreement,” as used in this Endorsement, shall mean either the note or loan agreement secured by the Guaranteed Mortgage.

b. “Advances,” as used in this Endorsement, shall mean only those advances of principal indebtedness made after the Date of Certificate as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Guaranteed Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Guaranteed Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.

2. The Division guarantees against loss or damage sustained by the Guaranteed by reason of:

a. The invalidity or unenforceability of the lien of the Guaranteed Mortgage as security for each Advance.

b. The lack of priority of the lien of the Guaranteed Mortgage as security for each Advance over any lien or encumbrance on the Title.

c. The invalidity or unenforceability or loss of priority of the lien of the Guaranteed Mortgage as security for the Indebtedness and Advances resulting from (i) re-Advances and repayments of Indebtedness, (ii) lack of outstanding Indebtedness before an Advance, or (iii) the failure of the Guaranteed Mortgage to comply with the requirements of state law of the state in which the Land is located to secure Advances.

3. The Division also guarantees against loss or damage sustained by the Guaranteed by reason of:

a. The invalidity or unenforceability of the lien of the Guaranteed Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the Indebtedness.

b. Loss of priority of the lien of the Guaranteed Mortgage as security for the Indebtedness, interest on interest, or interest as changed in accordance with the provisions of the Guaranteed Mortgage, which loss of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

“Changes in the rate of interest,” as used in this Endorsement, shall mean only those changes in

the rate of interest calculated pursuant to a formula provided in the Guaranteed Mortgage at Date of Certificate.

4. This Endorsement does not guarantee against loss or damage (and the Division will not pay costs, attorneys' fees, or expenses) resulting from:

a. Advances made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor.

b. The loss of priority of the lien of the Guaranteed Mortgage, as security for Advances, to the lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Certificate.

c. The loss of priority of the lien of the Guaranteed Mortgage as security for any Advance, to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Guaranteed that a federal tax lien was filed against the mortgagor, or (ii) the expiration of more than forty-five days after notice of a federal tax lien filed against the mortgagor.

d. The loss of priority of the lien of the Guaranteed Mortgage as security for Advances to any federal or state environmental protection lien.

e. Usury, or any consumer credit protection or truth-in-lending law.

f. The loss of priority of the lien of the Guaranteed Mortgage as security for any Advance to a mechanic's or materialmen's lien.

5. The Amount of Coverage shall include Advances.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.14 Future Advance – Reverse Mortgage ALTA Endorsement 14.3-06***

### **Instructions**

This Endorsement may be issued only with a reverse mortgage. Reverse mortgage loans are made to persons, generally one of whom is at least 62 years of age. Payments are not due until the person dies or leaves the property. The most common reverse mortgage program is the HUD Home Equity Conversion Mortgage program (HECM) which contemplates two mortgages – one for the lender and a subordinate mortgage for HUD. Other approved reverse mortgage programs involve FNMA, GNMA, FHLMC and FHA.

To issue this Endorsement, the Field Issuer must:

1. Verify the recorded mortgage discloses it is a reverse mortgage that secures future advances.
2. Verify the recorded mortgage contains the statutory notice provision prescribed in Iowa Code Section 654.12A.
3. Verify that the mortgage is one of the approved reverse mortgage programs listed above.



## Future Advance – Reverse Mortgage ALTA Endorsement 14.3-06

### **Certificate Number:**

1. The coverage for Advances added by Sections 2 and 3 of this Endorsement is subject to the exclusions in Section 4 of this Endorsement and the Exclusions in the Certificate, except Exclusion 3(d), the provisions of the Conditions, and the exceptions contained in Schedule B.

a. “Agreement,” as used in this Endorsement, shall mean either the note or loan agreement secured by the Guaranteed Mortgage.

b. “Advances,” as used in this Endorsement, shall mean only those advances of principal indebtedness made after the Date of Certificate as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the Guaranteed Mortgage to pay taxes and insurance, assure compliance with laws, or to protect the lien of the Guaranteed Mortgage before the time of acquisition of the Title, and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.

2. The Division guarantees against loss or damage sustained by the Guaranteed by reason of:

a. The invalidity or unenforceability of the lien of the Guaranteed Mortgage as security for each Advance.

b. The lack of priority of the lien of the Guaranteed Mortgage as security for each Advance over any lien or encumbrance on the Title.

c. The invalidity or unenforceability or loss of priority of the lien of the Guaranteed Mortgage as security for the Indebtedness and Advances resulting from (i) re-Advances and repayments of Indebtedness, (ii) lack of outstanding Indebtedness before an Advance, (iii) failure to comply with the requirements of state law to secure Advances, (iv) failure of the Guaranteed Mortgage to state the term for Advances, or (v) failure of the Guaranteed Mortgage to state the maximum amount secured by the Guaranteed Mortgage.

3. The Division also guarantees against loss or damage sustained by the Guaranteed by reason of:

a. The invalidity or unenforceability of the lien of the Guaranteed Mortgage resulting from any provisions of the Agreement that provide for (i) interest on interest, (ii) changes in the rate of interest, or (iii) the addition of unpaid interest to the Indebtedness.

b. Loss of priority of the lien of the Guaranteed Mortgage as security for the Indebtedness, including any unpaid interest that was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the Guaranteed Mortgage, which loss of priority is caused by (i) changes in the rate of interest, (ii) interest on interest, or (iii) increases in the Indebtedness resulting from the addition of unpaid interest.

“Changes in the rate of interest,” as used in this Endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the Guaranteed Mortgage at Date of Certificate.

“Interest,” as used in this Endorsement, shall include lawful additional interest based on net appreciated value.

4. This Endorsement does not guarantee against loss or damage (and the Division will not pay costs, attorneys’ fees, or expenses) resulting from:

a. Advances made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor.

b. The loss of priority of the lien of the Guaranteed Mortgage, as security for Advances, to the lien of real estate taxes or assessments on the Title imposed by governmental authority arising after Date of Certificate.

c. The loss of priority of the lien of the Guaranteed Mortgage as security for any Advance, to a federal tax lien, which Advance is made after the earlier of (i) actual knowledge of the Guaranteed that a federal tax lien was filed against the mortgagor, or (ii) the expiration of more than forty-five days after notice of a federal tax lien filed against the mortgagor.

d. The loss of priority of the lien of the Guaranteed Mortgage as security for Advances to any federal or state environmental protection lien.

e. Usury, or any consumer credit protection or truth-in-lending law.

f. The loss of priority of the lien of the Guaranteed Mortgage as security for any Advance to a mechanic’s or materialmen’s lien.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.15 Gap Coverage Endorsement***

### **Instructions**

The Gap Coverage Endorsement may be issued with the Commitment at the request of either the lender or the buyer, or both. The Division no longer provides this coverage by agreement with a lender when a Commitment is not issued. If a Closing Protection Letter is requested, a Commitment must be issued including the Gap Coverage Endorsement.

This Endorsement guarantees the time period from the Effective Date of the Commitment and including the date the deed and/or mortgage to be guaranteed are recorded. Since the issuance of this Endorsement provides assurances for any adverse matters arising in the gap period, the participating abstractor prepares and delivers a last minute search (Pre-Closing Search Certification, Division Form PCS) to the closer. A copy of Division Form PCS is attached to these instructions. The original effective date of the Commitment may be extended up to six months by obtaining a supplemental attorney opinion based upon Division Form PCS. Of course, the issuing Participating Attorney may issue the revised Commitment in lieu of the supplemental opinion.

If no new matters are disclosed on the Division Form PCS, the loan is closed and funds disbursed. If any new matters are shown on the Division Form PCS, the closer may proceed with the closing only after consulting the participating attorney who prepared the preliminary opinion and/or Commitment and upon such terms and conditions as the participating attorney may require based on the relevant law, rules and title standards.

If the Field Issuer has personal knowledge that the financial responsibility and integrity of the seller and/or buyer are questionable, the Field Issuer should decline to issue this Endorsement.

After closing, the mortgage and any other appropriate documents are filed of record as soon as possible, but no later than the tenth day following the date and time of the Division Form PCS.

The Title Guaranty Certificate is issued in the normal process by the Field Issuer or Title Guaranty staff. Immediately notify Title Guaranty upon discovering matters of record filed in the gap period.

For a field-issued Certificate, retain a copy of the completed Division Form PCS in your file. If the Certificate is to be issued by Title Guaranty, please provide a copy of the completed Division Form PCS with the Application for Title Guaranty.

For nonresidential transactions, contact the Division for approval to issue this Endorsement.

**PRE-CLOSING SEARCH CERTIFICATION  
TITLE GUARANTY DIVISION**

COMMITMENT NO.:

LOAN CLOSER:

PROPOSED GUARANTEED(S):

ABSTRACTOR:

ABST. OR PENCIL NOTES NO.:

PROPERTY ADDRESS:

BRIEF LEGAL:

NAME(S) OF SELLER(S):

NAME(S) OF BUYER(S) TO BE SEARCHED:

DATE AND TIME OF PRIOR CONTINUATION:

EFFECTIVE DATE AND TIME OF THIS CERTIFICATION:

(To be completed by abstractor)

The undersigned, acting in its capacity as a Participating Abstractor for the Title Guaranty Division of the Iowa Finance Authority, certifies that the appropriate records have been searched and that no matters affecting the title to the property described above have been filed between the effective date and time of the preliminary title opinion and the date and time shown above, except for the following: (To be completed by abstractor)\_\_\_\_\_

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PARTICIPATING ABSTRACTOR

BY

TITLE GUARANTY MEMBER #

DIVISION FORM: PCS

FILE NO.:

REVISED: 7/2005



## Gap Coverage Endorsement

### **Certificate Number:**

Notwithstanding anything to the contrary contained herein, the Division agrees that upon receipt of a properly executed Pre-Closing Search Certification (Division Form PCS), coverage hereunder and the Effective Date hereof shall be extended up to and including the recording of the deed and/or mortgage of the Proposed Guaranteed(s) identified in Schedule A hereof, provided that the documents are recorded no later than the tenth day, following the date of the Pre-Closing Search Certification, that documents can be recorded in the County Recorder's Office.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

***Section 5.16 Leasehold – Lenders ALTA Endorsement 13.1-06***

**Instructions**

The Leasehold Endorsement may be issued with the Lender Certificate when guaranteeing a mortgage covering a leasehold estate, and it is recommended that this Endorsement be utilized when covering such a leasehold estate.



## Leasehold – Lenders ALTA Endorsement 13.1-06

### **Certificate Number:**

1. As used in this Endorsement, the following terms shall mean:

- a. “Evicted” or “Eviction”: (a) the lawful deprivation, in whole or in part, of the right of possession guaranteed by this Certificate, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this Certificate.
- b. “Lease”: the lease agreement described in Schedule A.
- c. “Leasehold Estate”: the right of possession for the Lease Term.
- d. “Lease Term”: the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
- e. “Personal Property”: chattels located on the Land and property that, because of their character and manner of affixation to the Land, can be severed from the Land without causing appreciable damage to themselves or to the Land to which they are affixed.
- f. “Remaining Lease Term”: the portion of the Lease Term remaining after the Guaranteed has been Evicted as a result of a matter covered by this Certificate.
- g. “Tenant”: the tenant under the Lease and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of this Certificate, the Guaranteed Claimant.
- h. “Tenant Leasehold Improvements”: Those improvements, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Guaranteed’s expense or in which the Guaranteed has an interest greater than the right to possession during the Lease Term.

2. Valuation of Estate or Interest Guaranteed:

If in computing loss or damage it becomes necessary to value the Title as the result of a covered matter that results in an Eviction of the Tenant, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Guaranteed Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this Endorsement:

If the Guaranteed acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of this Certificate and thereafter is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the Guaranteed, but not to the extent that the same are included in the valuation of the Title.

- a. The reasonable cost of removing and relocating any Personal Property that the Guaranteed has the right to remove and relocate, situated on the Land at the time of Eviction the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.
- b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Guaranteed as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.
- c. The amount of rent that, by the terms of the Lease, the Guaranteed must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Guaranteed has been Evicted.
- d. The fair market value, at the time of the Eviction, of the estate or interest of the Guaranteed in any lease or sublease made by Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.
- e. Damages that the Guaranteed is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.
- f. Reasonable costs incurred by the Guaranteed to secure a replacement leasehold equivalent to the Leasehold Estate.
- g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Guaranteed, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, and landscaping costs.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

***Section 5.17 Leasehold – Owners ALTA Endorsement 13-06***

**Instructions**

The Leasehold Endorsement may be issued with the Owner Certificate when guaranteeing a leasehold estate. In fact, it is recommended that this Endorsement be utilized whenever covering such a leasehold estate.



## Leasehold – Owners ALTA Endorsement 13-06

### **Certificate Number:**

1. As used in this Endorsement, the following terms shall mean:

- a. “Evicted” or “Eviction”: (a) the lawful deprivation, in whole or in part, of the right of possession guaranteed by this Certificate, contrary to the terms of the Lease or (b) the lawful prevention of the use of the Land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case as a result of a matter covered by this Certificate.
- b. “Lease”: the lease agreement described in Schedule A.
- c. “Leasehold Estate”: the right of possession for the Lease Term.
- d. “Lease Term”: the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
- e. “Personal Property”: chattels located on the Land and property that, because of their character and manner of affixation to the Land, can be severed from the Land without causing appreciable damage to themselves or to the Land to which they are affixed.
- f. “Remaining Lease Term”: the portion of the Lease Term remaining after the Guaranteed has been Evicted as a result of a matter covered by this Certificate.
- g. “Tenant Leasehold Improvements”: Those improvements, including landscaping, required or permitted to be built on the Land by the Lease that have been built at the Guaranteed’s expense or in which the Guaranteed has an interest greater than the right to possession during the Lease Term.

### 2. Valuation of Estate or Interest Guaranteed:

If in computing loss or damage it becomes necessary to value the Title as the result of a covered matter that results in an Eviction of the Tenant, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The Guaranteed Claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

### 3. Additional items of loss covered by this Endorsement:

If the Guaranteed is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the Guaranteed, but not to the extent that the same are included in the valuation of the Title.

- a. The reasonable cost of removing and relocating any Personal Property that the Guaranteed has the right to remove and relocate, situated on the Land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.
- b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Guaranteed as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.
- c. The amount of rent that, by the terms of the Lease, the Guaranteed must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the Guaranteed has been Evicted.
- d. The fair market value, at the time of the Eviction, of the estate or interest of the Guaranteed in any lease or sublease made by Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.
- e. Damages that the Guaranteed is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.
- f. Reasonable costs incurred by the Guaranteed to secure a replacement leasehold equivalent to the Leasehold Estate.
- g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the Guaranteed, less the salvage value, for the Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, and landscaping costs.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.18 Location Endorsement – Condominium***

### **Instructions**

This Location Endorsement – Condominium may be attached to the Lender Commitment or Lender Certificate if the lender has requested the Endorsement for a residential loan, and the property is a condominium property.

The Field Issuer should obtain credible information to confirm the presence of a condominium at a certain address from a current appraisal, survey, real property inspection report, county assessor's report, or realtor's listing agreement.

Insert the Declaration of Condominium filing information (Book and Page, Document Number, or Instrument Number) and the address of the condominium unit, including town/city and state, on the Endorsement.



## Location – Condominium Endorsement

### **Certificate Number:**

The Division guarantees against loss or damage sustained by the Guaranteed by reason of any inaccuracies in the following assurances:

1. That, according to the Declaration of Condominium recorded as \_\_\_\_\_, and as amended from time to time, the Land is part of a Condominium Property.
2. That, the building on the Condominium Property has the No. \_\_\_\_\_ thereon, indicating that the same is known as \_\_\_\_\_.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.19 Location – Residential ALTA Endorsement 22.06***

### **Instructions**

This Location Endorsement – Residential may be attached to the Lender Commitment or Lender Certificate if the lender has requested the Endorsement for a residential loan. If the property is a condominium property, the Location Endorsement – Condominium should be utilized instead.

The Field Issuer should obtain credible information to confirm the presence of a residence at a certain address from a current appraisal, survey, real property inspection report, county assessor's report, or realtor's listing agreement.

Insert the address of the residence along with the town/city, and state on the Endorsement. For field-issued Certificates prepared using the Certificate Application Processing (CAP) program, this information will pull into the Location Endorsement automatically if the property address information is added to the "property details" screen of CAP.



## Location – Residential ALTA Endorsement 22-06

### **Certificate Number:**

The Division guarantees against loss or damage sustained by the Guaranteed by reason of the failure of a residence, known as \_\_\_\_\_ to be located on the Land at Date of Certificate. This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.20 Manufactured Housing Unit ALTA Endorsement 7-06***

### **Instructions**

This Endorsement provides that any mobile home, manufactured home or modular home on the property is covered by the Owner and/or Lender Certificate.

In order to issue the Endorsement, Title Guaranty requires the following:

Verify that the home is located outside a “manufactured home community” or “mobile home park” as defined in Iowa Code section 435.1(4) and (6).

Verify that the mobile home, etc. has been permanently attached to the land (i.e. concrete foundation, wheels removed, etc.). Many times your current appraisal, inspection or survey will address this. Otherwise an affidavit with pictures could suffice as evidence.

Verify that the assessor has classified the manufactured home as a real property improvement for current or future assessments. If no verification can be made, the following exception should be raised on the final opinion and on Schedule B of the Certificate:

*Consequences, if any, of the failure of the county assessor to assess real property taxes against the improvements located on the covered real estate.*

Verify that the modular home, manufactured home or modular home certificate of title has been collected by the county assessor because a note of conversion in the assessor’s records is not sufficient. Before Title Guaranty may be issued on a security interest listed in the personalty title, the home owner must deliver to the secured party a mortgage on the real estate for the unpaid amount of the secured debt, and the secured party must record said mortgage with the county recorder’s office.



## Manufactured Housing Unit ALTA Endorsement 7-06

**Certificate Number:**

The term “Land” includes the manufactured housing unit located on the land described in Schedule A at Date of Certificate.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.21 Mortgage Modification ALTA Endorsement 11-06***

### **Instructions**

This Endorsement assures the lender that the Guaranteed Mortgage has been modified and as so modified retains its priority.

The Field Issuer may issue this Endorsement provided the following requirements are met:

1. The modification agreement must be filed of record.
2. An updated abstract certification or post-closing search certification covering the recording must be reviewed to show:
  - a. The parties to the modification agreement appear of record as owner of the land and holder of the note. Secure name searches of the mortgagors and successors in ownership, if any. Also, any matters relating to the status and capacity of the parties must be reviewed.
  - b. There has been no full or partial conveyance of the land covered by the Guaranteed Mortgage. If a conveyance has been made, coverage under this Endorsement must be limited to the Land presently encumbered by the Guaranteed Mortgage.
  - c. A review of the modification agreement discloses nothing which would render the Guaranteed Mortgage invalid or unenforceable.
  - d. There are no liens or encumbrances subsequent to the original recording of the Guaranteed Mortgage.
    - i) If any such matters are found, they must be raised as exceptions, unless the parties holding the liens or encumbrances subject their interest to the Guaranteed Mortgage as modified by appropriate recorded subordination agreements, or properly released of record.
    - ii) If the Certificate reflects a mortgage or other lien as junior in Schedule B – Part II, require a new subordination by the lienholder or disclose said mortgage or lien under paragraph 2 of the Endorsement.
    - iii) If the Guaranteed Mortgage covers a lease, obtain a current estoppel and consent by the lessor.
    - iv) If a notice of bankruptcy is found against the owner, require a final nonappealable order authorizing the modification.
    - v) Remember to obtain all final mechanic's lien waivers from materialmen, general contractors and subcontractors, if applicable.
    - vi) Be sure to disclose under paragraph 2 of the Endorsement any unpaid real estate taxes and assessments.
3. ALTA Extended Coverage is given by this Endorsement; therefore, obtain and review an updated Composite Mortgage Affidavit, and survey coverage must be updated depending upon the type and value of the property. Disclose all new matters in paragraph 2 of the Endorsement.
4. Form E – Lender Endorsement may be issued with this Endorsement when alterations are required on the lender certificate, for example, the Guaranteed, legal description, Amount of Coverage, or the vesting of title has changed. Also, any modifications or deletions to the Schedule B Exceptions may be made by issuing Form E – Lender Endorsement.
5. Obtain approval from a Division underwriter.

This Endorsement should not be issued when the purpose of the modification is to add property to the Guaranteed Mortgage as additional security or when junior liens subordinated to the Guaranteed Mortgage have not been properly subordinated to the modification agreement.

To complete this Endorsement, insert the date of the modification agreement (paragraph 1 of the Endorsement), insert the date of recording and the recording number of the modification agreement (paragraph 1 of the Endorsement), and insert any additional exceptions (paragraph 2 of the Endorsement).



## Mortgage Modification ALTA Endorsement 11-06

### Certificate Number:

The Division guarantees against loss or damage sustained by the Guaranteed by reason of:

1. The invalidity or unenforceability of the lien of the Guaranteed Mortgage upon the Title at Date of Endorsement as a result of the agreement dated \_\_\_\_\_, recorded \_\_\_\_\_ (“Modification”); and

2. The lack of priority of the lien of the Guaranteed Mortgage, at Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the Certificate or any prior endorsement and except:

(Insert exceptions)

This Endorsement does not insure against loss or damage, and the Division will not pay costs, attorneys’ fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws that is based on:

1. the Modification being deemed a fraudulent conveyance or fraudulent transfer; or
2. the Modification being deemed a preferential transfer except where the preferential transfer results from the failure
  - a. to timely record the instrument of transfer; or
  - b. of such recordation to impart notice to a purchaser for value or to a judgment or lien creditor.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.22 Multiple Tax Parcels ALTA Endorsement 18.1-06***

### **Instructions**

This Endorsement may be utilized when the land described in Schedule A includes more than one real estate tax parcel. It is available with Lender and Owner Certificates. This Endorsement provides assurances that there are no other parcels being taxed with the guaranteed Land, that the parcels have only the specified tax parcel identification numbers contained in the Endorsement, and that the easements described in Schedule A cannot be cut off by non-payment of real estate taxes or assessments against the servient estate.

Prior to issuing this Endorsement, the Field Issuer must have an updated abstract or separate written assurance from the abstractor verifying:

1. that the separate and distinct real estate tax parcel number for each parcel of land abstracted (guaranteed) does **not** include any adjoining lot, parcel, vacated street or alley not included in the land guaranteed (the Field Issuer may need to compare a survey of the abstracted (guaranteed) legal description with the assessor's legal descriptions); and,
2. that all real estate taxes and special assessments for any guaranteed easement(s) included in the Schedule A legal description was (were) paid in full when the easement(s) was (were) filed of record.

Complete this Endorsement by inserting each Schedule A legal description Parcel Number and the Tax Identification Number(s) for each Parcel Number previously entered in the appropriate area or blank on the form.



## Multiple Tax Parcels ALTA Endorsement 18.1-06

### **Certificate Number:**

The Division guarantees against loss or damage sustained by the Guaranteed by reason of:

1. those portions of the Land identified below not being assessed for real estate taxes under the listed tax identification numbers or those tax identification numbers including any additional land:

(Enter identified land)

2. the easements, if any, described in Schedule A being cut off or disturbed by the nonpayment of real estate taxes, assessments or other charges imposed on the servient estate by a governmental authority.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.23 Planned Unit Development (PUD) – Lender ALTA Endorsement 5-06***

### **Instructions**

The Planned Unit Development (PUD) Endorsement – Lender may be used with the Lender Certificate. Planned Unit Developments may contain detached single family residences, as well as town homes and condominiums.

This Endorsement guarantees that the Guaranteed will not suffer any loss due to present violations of the restrictive covenants, loss of priority due to homeowners' association liens, force removal of any structure located primarily on the property in question encroaching over the property line, or the exercise of a right of first refusal that existed at the Date of Certificate.

Once it has been determined that each guaranteeing clause has, in fact, been satisfied, this Endorsement may be issued. This may involve:

1. Examination of any covenants, conditions and restrictions of record to determine that there are no violations and no forfeiture or right of reversion.
2. Determination that any lien for charges and assessments provided for in the covenants, conditions and restrictions are specifically subordinate to the mortgage. If the charges and assessments are superior to the mortgage covered, a statement should be obtained from the homeowner association stating there are no unpaid charges or assessments through the Date of Certificate.
3. If a right of first refusal is contained in the covenants, conditions and restrictions, a statement should be obtained from the homeowner association indicating that the right of first refusal has been waived or has been exercised.
4. Verifying that there are not known encroachments of any existing improvements located on the subject property onto adjoining land or upon any easement referred to in Schedule B – Part I. You should refer to the Underwriting section on encroachments in the Title Guaranty Manual for guidance in obtaining survey clearance for this Endorsement.
5. Verifying that there are no known encroachments of any existing improvements located on adjacent land onto the subject property. You should refer to the Underwriting section on encroachments in the Title Guaranty Manual for guidance in obtaining survey clearance for this Endorsement.



## Planned Unit Development (PUD) – Lender ALTA Endorsement 5-06

### **Certificate Number:**

The Division guarantees against loss or damage sustained by the Guaranteed by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B which restrict the use of the Land. The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of the Title. As used in this paragraph 1, the words “restrictive covenants” do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Certificate and is not excepted in Schedule B.
2. The priority of any lien for charges and assessments at Date of Certificate in favor of any association of homeowners which are provided for in any document referred to in Schedule B over the lien of any Guaranteed Mortgage identified in Schedule A.
3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of Title by reason of a right of first refusal to purchase the Land which was exercised or could have been exercised at Date of Certificate.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

***Section 5.24 Planned Unit Development (PUD) – Owner ALTA Endorsement***  
**5.1-06**

## **Instructions**

The Planned Unit Development (PUD) Endorsement – Owner may be used with the Owner Certificate. Planned Unit Developments may contain detached single family residences, as well as town homes and condominiums.

This Endorsement guarantees that the Guaranteed will not suffer any loss due to present violations of the restrictive covenants, loss of priority due to homeowners' association liens, force removal of any structure located primarily on the property in question encroaching over the property line, or the exercise of a right of first refusal that existed at the Date of Certificate.

Once it has been determined that each guaranteeing clause has, in fact, been satisfied, this Endorsement may be issued. This may involve:

1. Examination of any covenants, conditions and restrictions of record to determine that there are no violations and no forfeiture or right of reversion.
2. Determination that any lien for charges and assessments provided for in the covenants, conditions and restrictions are specifically subordinate to the deed. If the charges and assessments are superior to the deed covered, a statement should be obtained from the homeowner association stating there are no unpaid charges or assessments through the Date of Certificate.
3. If a right of first refusal is contained in the covenants, conditions and restrictions, a statement should be obtained from the homeowner association indicating that the right of first refusal has been waived or has been exercised.
4. Verifying that there are not known encroachments of any existing improvements located on the subject property onto adjoining land or upon any easement referred to in Schedule B – Part I. You should refer to the Underwriting section on encroachments in the Title Guaranty Manual for guidance in obtaining survey clearance for this Endorsement.
5. Verifying that there are no known encroachments of any existing improvements located on adjacent land onto the subject property. You should refer to the Underwriting section on encroachments in the Title Guaranty Manual for guidance in obtaining survey clearance for this Endorsement.



## Planned Unit Development (PUD) – Owner ALTA Endorsement 5.1-06

### **Certificate Number:**

The Division guarantees against loss or damage sustained by the Guaranteed by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B which restrict the use of the Land. The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of the Title. As used in this paragraph 1, the words “restrictive covenants” do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Certificate and is not excepted in Schedule B.
2. Any charges or assessments in favor of any association of homeowners, which are provided for in any document referred to in Schedule B, due and unpaid at Date of Certificate.
3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of Title by reason of a right of first refusal to purchase the Land which was exercised or could have been exercised at Date of Certificate.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## *Section 5.25 Single Tax Parcel ALTA Endorsement 18-06*

### **Instructions**

This Endorsement may be utilized when the land described in Schedule A includes only one real estate tax parcel. It is available on Lender and Owner Certificates.

Prior to issuing this Endorsement, the Field Issuer must have an updated abstract or separate written assurance from the abstractor that the guaranteed land has its own county assessor's real estate tax parcel number that does **not** include any other parcels. The Field Issuer must verify that adjoining lots, parcels, vacated streets or alleys are not included in the permanent tax number when those parcels are not included in the abstracted (guaranteed) legal description.

If the guaranteed land is included in more than one county assessor's real estate tax parcel number, you should not issue the Single Tax Parcel Endorsement. Instead, review the Multiple Tax Parcel Endorsement (ALTA 18.1-06) for possible issuance.



## Single Tax Parcel ALTA Endorsement 18-06

### **Certificate Number:**

The Division guarantees against loss or damage sustained by the Guaranteed by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.26 Standard Exception Waiver Endorsement – Residential***

### **Instructions**

The Standard Exception Waiver Endorsement - Residential is only available with a residential Owner Certificate to waive Standard Exceptions 1 through 5, known as “extended coverage”. If “extended coverage” is requested for commercial land (seven or more residential units, industrial or other nonresidential property) or vacant land, please refer to the instructions for the Standard Exception Waiver Endorsement – Commercial, as more stringent requirements must be met.

The Field Issuer will need to make:

1. A review of a current survey for matters of possession, encroachments, legal description problems, or other adverse matters;
2. A review of executed Composite Mortgage Affidavits (CMAs), by the sellers and the buyers; and,
3. A review of real estate tax and special assessment search.

To determine if one or more of the following Standard Exceptions may be waived:

**Standard Exception No. 1: “Rights or claims of parties in possession not shown by the Public Records.”** To waive this exception from the Owner Certificate, obtain and review a CMA from all buyers and sellers/titleholders. All matters disclosed by the CMA will appear as Special Exception(s) in Schedule B in lieu of Standard Exception No. 1 unless satisfactory disposition thereof is otherwise made. Also, a current survey discussed below should provide independent observation regarding signs of possession.

**Standard Exception No. 2: “Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.”** To waive this exception for properties \$500,000 or less from the Owner Certificate, the Field Issuer must obtain a survey showing the boundary lines, the location of all improvements relative to the property lines, easements, building setback lines, property dimensions and showing no signs of possession or possible encroachments. To waive this exception for properties over \$500,000.00 the Field Issuer must obtain a survey made in accordance with the “Minimum Standard Detail Requirements for Land Title Surveys as adopted by the American Title Association Congress on Surveying and Mapping.” The survey must be dated within three months of closing and must name the Division as an addressee.

Look for recorded and unrecorded easements, setback lines, encroachments and possible boundary disputes on the survey. All easements, setback lines, encroachments onto easements, violations of setback lines, encroachments onto adjoining property, encroachments from adjoining property onto the guaranteed Land, and any adverse matters must be raised as Special Exceptions on Schedule B of the Owner Certificate.

If encroachment coverage is requested, consult the Underwriting section of the Title Guaranty Manual regarding encroachments.

**Standard Exception No. 3: “Easements, or claims of easements, not shown by the Public Records.”** To waive this exception from the Owner Certificate, the Field Issuer must obtain a

survey in compliance with the requirements noted in Standard Exception No. 2 above.

**Standard Exception No. 4: “Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.”** To waive this exception from the Owner Certificate, the Field Issuer must obtain

1. CMA executed by all parties holding title to the Land during the 90 days preceding the date of closing verifying no materials delivered or work performed, or
2. Satisfactory evidence of payment in full of the cost of furnishing services, labor, and materials in connection with any improvement made to the Land 90 days prior to closing. It is advisable to obtain and review affidavits from the owner and general contractor disclosing all materialmen and all persons contracted with on the property along with all final lien waivers attached thereto, or
3. If materials provided and/or work performed but final mechanic’s lien waivers were not obtained, the proposed Guaranteed must provide by final appraisal or other satisfactory evidence that all construction is completed. Upon the expiration of the 90-day mechanic’s lien period after the date of completion, a mechanic’s lien search may be completed disclosing no mechanic’s lien claims upon which an Owner Certificate may be issued along with the Standard Exception Waiver Endorsement deleting Standard Exception No. 4.

If a mechanic’s lien is found, a mechanic’s lien may be discharged by the owner, principal contractor, or intermediate subcontractor by filing with the clerk of the district court of the county in which the property is located a bond in twice the amount of the sum for which the claim for the lien is filed, with surety or sureties, to be approved by the clerk.

Any indemnification taken as a condition precedent to the waiver of Standard Exception No. 4 must be pre-approved in writing from the Division.

Standard Exception No. 4 remains if clearance is not obtained.

**Standard Exception No. 5: “Taxes or special assessments which are not shown as existing liens by the Public Records.”** To waive this exception from the Owner Certificate, the Field Issuer must review the CMAs and the abstract/search for special assessments and taxes and raise such matters as exceptions on Schedule B.

Complete this Endorsement by inserting the number(s) of the standard exceptions to be deleted from the Certificate into the blank area on the Endorsement.



## Standard Exception Waiver Endorsement – Residential

**Certificate Number:**

This Endorsement shall be effective if a residence (1 to 6 family units) is affixed to the Land.

Standard Exception(s) \_\_\_\_\_ has(have) been deleted.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.27 Street Assessments ALTA Endorsement 1-06***

### **Instructions**

This Endorsement is for use with the Lender Certificate to provide the guaranteed lender protection against loss sustained by reason of any assessments for street improvements under construction or completed at the Date of Certificate having priority over the lien of the Guaranteed Mortgage.

This coverage may be furnished, provided:

1. An inspection of the secured property discloses that at the time of recording there is no evidence of street improvements under construction or recently completed, the attached Affidavit for Lender's Street Assessment Endorsement is obtained from the seller or titleholder of the property stating that there has been no recent street improvements and that the seller or titleholder has not received notice (or become aware of) proposed street improvements.
2. The abstract/search does not disclose any new assessment districts, bonds or pending assessments or bonds filed in the appropriate office of the applicable agencies empowered to issue such bonds or assessments.

If street assessments or possible street assessments are found, list said assessments or bonds as exceptions in Schedule B – Part I, unless released.

**AFFIDAVIT FOR  
LENDER'S STREET ASSESSMENT ENDORSEMENT**

STATE OF IOWA  
COUNTY OF \_\_\_\_\_

Date: \_\_\_\_\_

Property Legal Description:

\_\_\_\_\_

The undersigned, being the seller(s) and/or owner(s) of record for the above described property, hereby verify the truth and accuracy of the following statements:

1. There have been no recent street improvements that would benefit the above referenced legal description.
2. I (we) have not received notice or have become aware of any proposed street improvements that would benefit the above referenced legal description.

This affidavit is given to the Title Guaranty Division as an inducement to issue the Street Assessments Endorsement with the Lender Certificate providing protection against loss sustained by reason of any assessments for street improvements having priority over the Guaranteed Mortgage.

\_\_\_\_\_  
[Name of seller and/or owner]

\_\_\_\_\_  
[Name of seller and/or owner]

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_

\_\_\_\_\_  
(Notary Public)



## Street Assessments ALTA Endorsement 1-06

### **Certificate Number:**

The Division guarantees against loss or damage sustained by the Guaranteed by reason of the lack of priority of the lien of the Guaranteed Mortgage over the lien of any assessments for street improvements under construction or completed at Date of Certificate.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.28 Variable Rate Mortgage ALTA Endorsement 6-06***

### **Instructions**

The Variable Rate Mortgage Endorsement may be attached to a Lender Certificate guaranteeing the lien of a variable rate mortgage loan made pursuant to the terms of the regulations of the Federal Home Loan Bank Board or the Comptroller of the Currency.

This Endorsement guarantees the provisions of the mortgage that provide for changes in the interest rate will not impair the validity, enforceability, or the priority of the mortgage. Coverage for loss due to usury, consumer credit protection or truth-in-lending law is excluded.

The mortgage documentation should be examined to determine whether the mortgage is in compliance with the applicable regulations.



## Variable Rate Mortgage ALTA Endorsement 6-06

### **Certificate Number:**

The Division hereby guarantees against loss or damage sustained by the Guaranteed by reason of:

1. The invalidity or unenforceability of the lien of the Guaranteed Mortgage resulting from its provisions that provide for changes in the rate of interest.
2. Loss of priority of the lien of the Guaranteed Mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the Guaranteed Mortgage, which loss of priority is caused by the changes in the rate of interest.

“Changes in the rate of interest”, as used in this Endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the Guaranteed Mortgage at Date of Certificate.

This Endorsement does not guarantee against loss or damage based upon:

1. usury, or
2. any consumer credit protection or truth in lending law.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## **Instructions**

The Negative Amortization Endorsement is a lender's endorsement. This Endorsement may be issued if the requirements listed for the Variable Rate Mortgage Endorsement and the requirements set forth below have all been met. Usually the lender will require coverage amount to be increased by 110-125% of the mortgage amount. This is acceptable to Title Guaranty.

There must be a detailed description of the negative amortization feature of the loan contained in the Guaranteed Mortgage or a rider attached to the Guaranteed Mortgage. The mortgage must clearly state that the installments when paid may not be sufficient to pay the interest which has accrued; therefore, the interest which is unpaid will be added to the principal and like interest will be charged on the interest so added to the principal.



## Variable Rate Mortgage, Negative Amortization ALTA Endorsement 6.2-06

### Certificate Number:

The Division guarantees against loss or damage sustained by the Guaranteed by reason of:

1. The invalidity or unenforceability of the lien of the Guaranteed Mortgage resulting from its provisions that provide for (a) interest on interest, (b) changes in the rate of interest, or (c) the addition of unpaid interest to the principal balance of the loan.
2. Loss of priority of the lien of the Guaranteed Mortgage as security for the principal balance of the loan, including any unpaid interest which was added to principal in accordance with the provisions of the Guaranteed Mortgage, interest on interest, or interest as changed in accordance with the provisions of the Guaranteed Mortgage, which loss of priority is caused by (a) changes in the rate of interest, (b) interest on interest, or (c) increases in the unpaid principal balance of the loan resulting from the addition of unpaid interest.

“Changes in the rate of interest”, as used in this Endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the Guaranteed Mortgage at Date of Certificate.

This Endorsement does not guarantee against loss or damage based upon:

1. usury, or
2. any consumer credit protection or truth in lending law.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## ***Section 5.30 Zoning – Unimproved Land ALTA Endorsement 3-06***

### **Instructions**

This Endorsement may be issued with Owner and Lender Certificates to provide assurance concerning zoning on land which is unimproved as of the date of Certificate. This Endorsement may also be used on improved land.

The following procedure is recommended:

1. Examine the applicable zoning ordinances and amendments thereto to determine the particular zone and permitted use of improvements to be located on the guaranteed land.
2. It is advisable that you obtain a letter from the governing agency whether it is the city, county or state depending upon where the land is situated, stating what the zone is and the uses for which the zoning would allow the property to be used.

Complete this Endorsement by inserting the applicable zoning classification(s) and the use or uses allowed for the applicable classification(s) in the appropriate areas or blanks on the form.



## Zoning – Unimproved Land ALTA Endorsement 3-06

### **Certificate Number:**

1. The Division guarantees against loss or damage sustained by the Guaranteed in the event that, at Date of Certificate,

a. According to applicable zoning ordinances and amendments, the Land is not classified Zone Insert Zone;

b. The following use or uses are not allowed under that classification:

(Insert disallowed uses)

2. There shall be no liability under this Endorsement based on

a. Lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.a. does not modify or limit the coverage provided in Covered Risk 5.

b. The invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses.

c. The refusal of any person to purchase, lease or lend money on the Title covered by this Certificate.

This Endorsement is issued as part of the Certificate. Except as it expressly states, it does not (i) modify any of the terms and provisions of the Certificate, (ii) modify any prior endorsements, (iii) extend the Date of Certificate, or (iv) increase the Amount of Coverage. To the extent a provision of the Certificate or a previous endorsement is inconsistent with an express provision of this Endorsement, this Endorsement controls. Otherwise, this Endorsement is subject to all of the terms and provisions of the Certificate and of any prior endorsements.

## **Article VI: Rates**

Premiums are computed in accordance with Board-approved rates. The basic rates are minimum charges applicable to routine residential transactions and cover only the cost of the risk for title coverage. In situations involving extraordinary risk, commercial transactions, unique or multiple Endorsements, or if special services are rendered, the Division reserves the right to make additional charges. These additional charges are added to and become a part of the guaranty fee.

The cost of services or other products provided by the Field Issuer or other party in connection with the real estate transaction are not included in the basic rates. No Field Issuer in the Program shall charge or receive any portion of the fee for the Certificates or the fee for any other product or service offered by the Division. The following rates apply to Division- or Field Issuer-issued Commitments, Certificates, and Endorsements.

## ***Section 6.01 Basic Rates – Residential***

### **FREE Owner Certificate**

Homebuyers who meet certain criteria and who purchase property on or after April 1, 2007, are eligible for a free Owner Certificate when it is issued concurrently with a Lender Certificate. Free owner's coverage will be available for properties used as a primary residence valued at \$500,000.00 or less, when issued on 2006 ALTA forms.

### **Coverage Amount for Owner Certificate**

An Owner Certificate will not be issued for less than the sale price of the property and in no event for less than the full value of the real property.

### **Coverage Amount for Lender Certificate**

A Lender Certificate usually cannot be issued for an amount less than the full mortgage amount. There is an exception: When the real property covered in the Certificate represents only a part of the security for the loan and the balance of the security is personal property, the Certificate shall be written in the amount of the loan applicable to the real property. The lender shall furnish a statement to the Field Issuer or to the Division as to such values.

### **Residential Premium Rates Form Attached**

## Residential Premium Rates

Coverage	Pricing
Lender's coverage up to and including \$500,000	\$110.00
Lender's coverage over \$500,000 up to and including \$1,000,000	\$110 plus \$1 per \$1,000 over \$500,000 (round UP to nearest \$1,000)
Additional concurrent Certificates (2 <sup>nd</sup> mortgage, etc.)	\$25.00
Owner's Coverage – Primary Residence up to and including \$500,000 (Issued in conjunction with Lender's Certificate)	Available at No Charge*
Owner's Coverage – Not primary residence, up to and including \$500,000 (Issued in conjunction with Lender's Certificate)	\$25.00
Owner's Coverage – No Lender coverage	\$110 plus \$1 per \$1,000 over over \$500,000 (round UP to nearest \$1,000)
Owner's Coverage – over \$500,000 – No Lender Coverage	\$110 plus \$1 per \$1,000 over \$500,000 (round UP to nearest \$1,000)
Owner's Coverage – over \$500,000 with Lender Coverage	First Certificate based on higher coverage amount, second Certificate \$25.00
Refinance or Non-Purchase Transaction	\$90.00
Lender or Owner Coverage exceeding \$1,000,000	Call for Quote
Commitments	No Charge
Certified copies of Certificates	\$15.00

\*Purchase transactions closing on or after April 1, 2007 issued on ALTA 2006 forms only

### Lender Endorsements

Title	Price
Comprehensive 1	No Charge
EPA (ALTA 8.1-06)	No Charge
Location (ALTA 22-06)	No Charge
Variable Rate Mortgage (ALTA 6-06)	No Charge
Endorsement Against Loss – Liens	No Charge

Additional residential endorsements are available for Owners and Lenders at \$15.00 each (see Web site for details and requirements)

**For Additional Information contact us:**

**Title Guaranty Division  
Iowa Finance Authority  
2015 Grand Avenue  
Des Moines, IA 50312**

Help Desk: 515.725.HELP (4357) Toll Free: 800.432.7230 Fax: 515.725.4901  
[www.iowaFinanceAuthority.gov/titleguaranty](http://www.iowaFinanceAuthority.gov/titleguaranty)

## ***Section 6.02 Basic Rates – Non-Residential***

### **Non-Residential Premium Rates – Effective 1-1-2006**

<b>Coverage Amount</b>	<b>Cost</b>
Basic rate for coverage amounts \$0.01 - \$110,000.00	\$110.00 (minimum premium)
Basic rate for coverage amounts \$110,000.01 - \$500,000.00	\$1.00 per \$1,000.00 (round all amounts up to the nearest \$1,000.00)
Basic rate for coverage amounts greater than \$500,000.00 (Coverage over \$500,000.00 requires a Commitment pre-approved by the Division)	Call Title Guaranty for quote (800) 843-0201
Basic rate for coverage when both owner and lender certificates are purchased concurrently	<u>Larger certificate:</u> \$1.00 per \$1,000.00 up to \$500,000.00 or quoted amount (\$110.00 minimum; round all amounts up to the nearest \$1,000.00)  <u>Additional certificate(s):</u> \$35.00 each
Commitments	No Charge
Duplicate Certificates	\$15.00 each
Endorsements for coverage of \$500,000.00 or less	\$30.00 per endorsement

## Section 6.03 Premiums for Transactions Closed Prior to January 1, 2006

### PLEASE REMEMBER:

To help you avoid the most common errors in calculating Title Guaranty premiums, please remember that:

- The minimum premium on lines 1, 6, 12 and 17 is always \$35.00.
- Round all lender and owner coverage amounts UP to the nearest \$1,000 when calculating premium.
- The Reissue Rate Premiums on lines 12 and 17 are each rounded UP to the nearest \$1.
- Lender coverage is based upon the amount of the covered mortgage.
- Owner coverage is based upon either: (a) the purchase price of the property if a new purchase, or (b) the appraised value of the property if a refinance.
- The "Larger Certificate" in lines 6 and 17 refers to the certificate which provides the greater amount of coverage (usually the Owner Certificate).
- Endorsements may be ordered at any time, even after the certificate has been issued, by remitting the proper amount and designating the endorsement(s) to be added.
- The Total Premium on lines 5, 11, 16 and 22 will ALWAYS be in whole dollar amounts with .00 cents.
- All checks must be made payable to "Treasurer—State of Iowa."

### Step-By-Step Chart for Calculating Basic Rate Premiums

#### Lender/Owner Certificate Only

1. Lender/Owner Premium	\$ _____
2. Endorsements @ \$15.00	\$ _____
3. Commitment @ \$20.00 (if applicable)	\$ _____
4. Discount to borrower for attorney prepared certificate @ -\$20.00 (if applicable)	\$ _____
5. Total Premium	\$ _____

#### Lender & Owner Certificates

6. Larger Certificate	\$ _____
7. Second Certificate	\$ <u>15.00</u>
8. Endorsements @ \$15.00	\$ _____
9. Commitment @ \$20.00 (if applicable)	\$ _____
10. Discount to borrower for attorney prepared certificates @ -\$20.00 (if applicable)	\$ _____
11. Total Premium	\$ _____

(Please make copies for future calculations.)

### Step-By-Step Chart for Calculating Reissue Rate Premiums

#### Lender/Owner Certificate Only

12. Lender/Owner Premium	\$ _____
13. Endorsements @ \$8.00	\$ _____
14. Commitment @ \$20.00 (if applicable)	\$ _____
15. Discount to borrower for attorney prepared certificate @ -\$20.00 (if applicable)	\$ _____
16. Total Premium	\$ _____

#### Lender & Owner Certificates

17. Larger Certificate	\$ _____
18. Second Certificate	\$ <u>8.00</u>
19. Endorsements @ \$8.00	\$ _____
20. Commitment @ \$20.00 (if applicable)	\$ _____
21. Discount to borrower for attorney prepared certificates @ -\$20.00 (if applicable)	\$ _____
22. Total Premium	\$ _____

Please make copies for future calculations.)



## TITLE GUARANTY PREMIUM RATES

**Iowa Finance Authority  
Title Guaranty  
200 E. Grand Ave., Suite 350  
Des Moines, IA 50309**

**Phone (515)242-4989  
Toll Free (800)843-0201  
TTY (515)242-4890  
FAX (515)242-4994**

## BASIC RATE PREMIUMS

Type	Cost
Basic rate for coverage amounts \$1 - \$35,000	\$35.00 (minimum premium)
Basic rate for coverage amounts \$35,001 - \$250,000	\$1 per \$1,000 (round all amounts UP to the nearest \$1,000)
Basic rate for coverage amounts greater than \$250,000	Call Title Guaranty for exact quote (800)843-0201
Basic rate for coverages of any amount when both owner and lender certificates are purchased concurrently	<u>Larger certificate:</u> \$1 per \$1,000 (\$35 minimum; round all amounts UP to the nearest \$1,000)  <u>Second certificate:</u> \$15 flat fee
Commitment rate (effective 5-1-93)	\$20
Discount to borrower for attorney prepared certificates	\$20

(Tgform061201)

## BASIC RATE ENDORSEMENTS

Number	Cost
#410 Date Down***	No Charge
#420 Standard Exception Waiver**	\$15.00
#430 Comprehensive*	\$15.00
#431 Variable Rate Mortgage*	\$15.00
#450 Encroachment***	\$15.00
#451 Condominium*	\$15.00
#452 Location***	\$15.00
#453 Form E***	No Charge
#454 Continuation Sheet***	No Charge
#455 Revolving Credit Mortgage*	\$15.00
#456 Environmental Protection Lien*	No Charge
#457 Zoning Form 3***	\$15.00
#458 Planned Unit Development*	\$15.00
#459 Zoning Form 3.1***	\$15.00
#460 Restrictions – Form 1***	\$15.00
#461 Restrictions – Form 2*	\$15.00
#462 Restrictions – Form 3***	\$15.00
#463 Manufactured Housing Unit***	\$15.00
#464 Balloon Mortgage*	\$15.00
#466 Gap Coverage***	\$30.00

Can be issued with the Lender's Certificate only.  
 \*\* Can be issued with the Owner's Certificate only.  
 \*\*\* Can be issued with the Lender's or the Owner's Certificate.

## REISSUE RATE PREMIUMS

Type	Cost
Reissue rate for coverage amounts \$1 - \$70,000	\$35.00 (minimum premium)
Reissue rate for coverage amounts \$70,001 - \$250,000	\$.50 per \$1,000 (round all premiums UP to the nearest \$1)
Reissue rate for coverage amounts greater than \$250,000	Call Title Guaranty for exact quote (800)843-0201
Reissue rate for coverages of any amount when both owner and lender certificates are purchased concurrently	<u>Larger certificate:</u> \$.50 per \$1,000 (\$35 minimum; round all premiums UP to the nearest \$1)  <u>Second certificate:</u> \$8 flat fee
Commitment rate (effective 5-1-93)	\$20
Discount to borrower for attorney prepared certificates	\$20

Reissue: A reissue is needed when the property is already covered by a previous Title Guaranty Certificate. The lender on the reissued certificate does not need to be the same as the lender on the previous certificate.

## REISSUE RATE ENDORSEMENTS

Number	Cost
#410 Date Down***	No Charge
#420 Standard Exception Waiver**	\$8.00
#430 Comprehensive*	\$8.00
#431 Variable Rate Mortgage*	\$8.00
#450 Encroachment***	\$8.00
#451 Condominium*	\$8.00
#452 Location***	\$8.00
#453 Form E***	No Charge
#454 Continuation Sheet***	No Charge
#455 Revolving Credit Mortgage*	\$8.00
#456 Environmental Protection Lien*	No Charge
#457 Zoning Form 3***	\$8.00
#458 Planned Unit Development*	\$8.00
#459 Zoning Form 3.1***	\$8.00
#460 Restrictions – Form 1***	\$8.00
#461 Restrictions – Form 2*	\$8.00
#462 Restrictions – Form 3***	\$8.00
#463 Manufactured Housing Unit ***	\$8.00
#464 Balloon Mortgage*	\$8.00
#466 Gap Coverage***	\$30.00

\* Can be issued with the Lender's Certificate or  
 \*\* Can be issued with the Owner's Certificate on  
 \*\*\* Can be issued with the Lender's or the Owner's Certificate.

#### ***Section 6.04 Division Review of Premium Computation***

The Division will review the premium computation of each Certificate for accuracy. If a significant error appears in the premium computation, a refund check will be issued or additional funds will be requested.

## **Article VII: Underwriting**

When waiving the Five Standard Exceptions on Certificates, when Endorsements expanding or modifying coverage under the Certificate are to be issued, or in large or unusual transactions, problems may arise which require that the Field Issuer look outside the four corners of the abstract to determine if a Certificate should be issued. The purpose of this portion of the Manual is to provide guidance in those situations.

In general, the Division will rely upon the Participating Attorney's examination of the abstract and his or her compliance with the underwriting standards, procedures, and requirements set forth in this Manual or otherwise promulgated by the Division for assurance that the risks covered by its Certificate has been properly underwritten. However, the Division reserves the right, at any time, to make special inquiry to assure that all underwriting standards, procedures, and requirements are followed and/or to conduct its own examination of the abstract of title, where such action is deemed prudent by the Division due to the size of the risk undertaken, the circumstances of the particular transaction, or other factors of concern to the Division or its reinsurer. Field Issuers must contact the Division before issuing a Commitment or Certificate in cases where large or unusual transactions are involved.

## ***Section 7.01 Access***

1. Paragraph 4 of the Covered Risks of both the Owner Certificate and Lender Certificate (ALTA 6-17-2006) protects against loss or damage sustained or incurred by reason of “No right of access to and from the Land.” Accordingly, the examining Participating Attorney must ascertain that the property to be covered has access.
  - a. In most situations, it will be clear that no access problem exists. For example, a lot in a certain block in a certain subdivision will almost invariably be adjacent to a platted street. However, situations may arise where a part of a tract of land is sold from a larger tract and the smaller portion does not adjoin a highway or street, and is not served by a private easement of access. The Participating Abstractor is expected to show in the abstract all matters affecting access that are in the public records. In situations where the Participating Attorney’s examination reveals that the property is land-locked, the following exception should be raised in Schedule B of the Commitment:

*Attention is directed to the fact that the public records do not show any means of ingress or egress to or from the Land, and, by reason thereof, this Commitment and our Guaranty, if and when issued, should not be construed as guaranteeing against any loss or damage by reason of lack of access to and from the Land.*

- b. On the final Certificate issued, if the access question has not been resolved to the Participating Attorney’s satisfaction, the relevant Schedule B exception is to be worded as follows:

*Notwithstanding the guaranteeing clauses of this Guaranty, the Division does not guarantee against any loss or damage by reason of lack of access to and from the Land.*

2. An easement may be created by grant, deed, reservation, agreement, or even by a mortgage. Examine the chain of title to determine whether:
  - a. Title was or is vested in the grantor whose conveyance or agreement created or will create the easement;
  - b. The instrument contains all elements required for a valid conveyance, including signature by the grantor and an acknowledgment;
  - c. The instrument contains a waiver of homestead, dower, or curtesy rights along with the signature of the grantor’s spouse;
  - d. The instrument states that the easement is for ingress and egress purposes;
  - e. The instrument contains a legal description of the easement and a legal description of the estate to be benefited;
  - f. Title in the grantees is held exactly the way the grantees hold title to the estate to be benefited, for example, as joint tenants or as tenants in common;
  - g. Mortgagee, lien holders, and any other parties with an interest in the servient estate consent to or join in the instrument creating the easement; and
  - h. The instrument is or will be recorded.
3. Easements may be created by other means, such as by implication, promissory estoppel, and prescription. Typically, the Division does not rely on these methods for providing access coverage.
4. If the abstract or other evidence reveals that one of the following events (termination) has occurred since the creation of the easement, the easement cannot be guaranteed until a new instrument is properly executed, delivered, and recorded to re-establish the easement:

- a. All holders of an interest may terminate by agreement. However, do not disregard an agreement to terminate an easement because of a defect in the instrument. An easement should not be guaranteed if there is an attempt to terminate the easement even if invalid. Also, be sure an alternate access easement or adjoining road dedication is created to replace the original access easement.
- b. The doctrine of merger holds that if the ownership of the servient estate becomes vested in the ownership of the dominate estate, the easement will merge into the fee simple of the servient estate. If the servient estate is burdened by a lien created prior to the creation of the easement, the foreclosure of the lien will terminate the easement. Remember, before guaranteeing an access easement, all senior lienor(s) must join in or consent to the creation of the easement.

## ***Section 7.02 Lender Certificate – Special Considerations***

The Lender Certificate extends coverage to the lender assuring that the titleholder(s) are parties in possession, that there are no mechanic's liens against the property, and that there are no encroachments or boundary line disputes. Before issuing a Lender Certificate, the Field Issuer must be satisfied that appropriate inquiries have been made regarding possession, potential mechanic's liens, encroachments, or boundary disputes.

The Division requires that the closer provide underwriting information concerning any boundary disputes or apparent encroachments, as well as whether parties in possession may claim rights not of record. In addition, the Division requires that the closer provide underwriting information concerning recent improvements which could give rise to mechanic's liens. See section 7.03 of this Article, "Mechanic's Liens," for more details.

For Certificates issued on 1-6 unit dwellings, this information can be provided by obtaining a properly executed Primary Residence CMA. This CMA is intended to provide confirming evidence in cases where problems are not apparent to the parties or the closer. See section 4.10, Article IV, "Use of the Composite Mortgage Affidavit," for more information regarding the CMA.

If the property covered is not a primary residence, or if there is an indication of problems, the closer should use the All Purpose CMA. All paragraphs in this CMA must be fully completed, and attachments may be necessary. If problems are disclosed and cannot be released or resolved, one or more of the following Five Standard Exceptions MUST be added to the Lender Certificate:

- 1. Any right or claim of a party in possession not shown by the Public Records.*
- 2. Notwithstanding the guaranteeing clauses of this Guaranty, the Division does not guarantee against any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land.*
- 3. Any easement, or claim of easement, not shown by the Public Records.*
- 4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.*
- 5. Notwithstanding the guaranteeing clauses of this Guaranty, the Division does not guarantee against taxes or special assessments which are not shown as existing liens by the Public Records.*

### ***Section 7.03 Mechanic's Liens***

If there has been new construction, or recent improvements have been made to residential property, the Field Issuer should not provide mechanic's lien coverage unless there is satisfactory evidence of payment in full of the cost of furnishing services, labor, and materials in connection with any improvement made to the property in the 90 days prior to closing. It is advisable to obtain and review affidavits from the owner and general contractor disclosing all materialmen and all persons contracted with on the property have been paid in full, along with all final mechanic's lien waivers attached thereto. Suggested contractor and owner affidavits and mechanic's lien waivers are shown following this section.

In the alternative, upon the expiration of the 90-day mechanic lien period after the date of completion of construction or improvements, a mechanic's lien search may be completed disclosing no mechanic's lien claims upon which a Certificate may be issued with mechanic's lien coverage. Refer to the Division's Residential Mechanic's Lien Affidavit in section 4.12, Article IV, "Division Forms."

If a mechanic's lien is found, it may be discharged by the owner, principal contractor, or intermediate subcontractor by filing with the clerk of the district court of the county in which the property is located a bond in twice the amount of the sum for which the claim for the lien is filed, with surety or sureties, to be approved by the clerk.

Any indemnification taken as a condition precedent to the waiver of the mechanic's lien exception, Standard Exception No. 4, must be pre-approved in writing from the Division.

Mechanic's lien coverage is provided by deletion of the Standard Exception No. 4 in the Standard Exception Waiver Endorsement for an Owner Certificate. Standard Exception No. 4 is automatically deleted from the Lender Certificate; therefore, the Field Issuer must raise the following Standard Exception No. 4 if mechanic's lien clearance has not been provided:

*Any lien or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.*

**CAUTION:** When mechanic's lien issues arise for non-residential property, the Participant should contact the Division's underwriting department as more stringent requirements may apply.

#### **Mechanic's Lien Forms**

Copies of the General Contractor's Sworn Statement, General Contractor Affidavit, Partial Lien Waiver, and Final Lien Waiver follow. See also the "New Construction" page at [http://www.iowafinanceauthority.gov/en/title\\_guaranty\\_division/new\\_construction/](http://www.iowafinanceauthority.gov/en/title_guaranty_division/new_construction/) for new construction forms and guidance on how to handle closings with specific builders.



## General Contractor's Sworn Statement - Residential

Page 1 of 2

State of \_\_\_\_\_

County of \_\_\_\_\_

The undersigned, being duly sworn, on oath deposes and says that he/she is the \_\_\_\_\_  
(*Title*) of \_\_\_\_\_ (*Business Name*), that is the owner or has a contract with  
the owner(s), \_\_\_\_\_, to furnish materials for and/or perform labor  
regarding the \_\_\_\_\_ (*Description of Work*) on the following  
described real estate in \_\_\_\_\_ County, State of Iowa, commonly known as  
\_\_\_\_\_ (*Street Address*), and legally described as  
\_\_\_\_\_  
\_\_\_\_\_ (*Legal Description*).

That, for the purposes of said contract, the following persons, firms and/or corporations have been contracted with, and furnished material for or performed labor upon, a building or land for improvement, alteration or repair thereof, situated on or being said real estate. That this statement is a full, true and complete statement of all such persons, firms and corporations, the kind of material furnished or labor performed, the inclusive dates the material was furnished or labor performed, and the total amount of each contract. The undersigned further states that all material (except any material disclosed herein) has been furnished from the undersigned's own stock and has been paid for in full, and that there are no other contracts for material furnished or labor performed.

Name and Address	Type of Material Furnished or Labor Performed	Date(s) Material Furnished or Labor Performed	Total Amount of Contract

<b>Total</b>			

Signed this \_\_\_\_\_ day of \_\_\_\_\_ (*Month*), \_\_\_\_\_ (*Year*).

\_\_\_\_\_ (*Name of Firm or Company, if applicable*)

\_\_\_\_\_ (*Address*)

\_\_\_\_\_

By:

\_\_\_\_\_

\_\_\_\_\_ (*Name*), \_\_\_\_\_ (*Title*)

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_ (*Month*),  
 \_\_\_\_\_ (*Year*).

\_\_\_\_\_

Notary Public



### AFFIDAVIT OF GENERAL CONTRACTOR

STATE OF IOWA )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

The undersigned states as follows:

1. I, \_\_\_\_\_, having been first duly sworn, depose and state that I am the \_\_\_\_\_ of \_\_\_\_\_, which was the General Contractor which constructed the residence and appurtenant buildings, and provided other improvements upon the following described real estate in \_\_\_\_\_ County, Iowa, to wit:

(Insert Legal Description)

locally known as and located at \_\_\_\_\_

2. Construction and improvements on the above-described real estate have now been fully completed, except for \_\_\_\_\_ (write N/A if not applicable) and all indebtedness incurred for labor and material provided in connection with construction or improvements on said real estate, for which invoices have been provided to the Owner/Contractor, have been fully paid.

3. Attached hereto are lien waivers from all persons, firms, and corporations who have been contracted with, and furnished material for or performed labor upon the above-described real estate through \_\_\_\_\_ (insert date through which lien waivers collected or write N/A if not applicable).

4. Neither the undersigned, any other General Contractor, material provider, Sub-Contractor nor any persons whomsoever, have any right or claim for Mechanic's Liens in connection with said construction or improvements at this time due to overdue payments owed to them. In the event a mechanic's lien is filed against the above-described property, the undersigned will immediately have the lien discharged upon receiving notice of the same.

5. The undersigned agrees to hold the Title Guaranty Division harmless for any loss, including but not limited to attorneys' fees and expenses, suffered by reason of the Title Guaranty Division's reliance on this affidavit.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Owner/Contractor

By: \_\_\_\_\_

Its: \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000\_\_.

\_\_\_\_\_  
Notary Public



## Partial Waiver of Mechanic's Lien

The undersigned, having furnished material or labor for, or performed labor upon, a building or land for improvement, alteration or repair thereof, situated on or being real estate described as (legal description or street address):

---

---

---

The undersigned hereby acknowledges receipt of payment of \$\_\_\_\_\_ as a partial payment for its furnishing of labor and material for the above-referenced project and hereby waives, releases, and discharges any lien claim or lien right it has or could have to the extent of the partial payment made in exchange for this partial lien release. The undersigned states that this partial lien release is not intended to and does not release any lien claims or rights for work, labor, or materials for which payment has not yet been received by the undersigned.

Dated at \_\_\_\_\_ (City and State), on the \_\_\_\_ day of \_\_\_\_\_ (Month), \_\_\_\_\_ (Year).

\_\_\_\_\_ (Name of Contractor)

\_\_\_\_\_ (Address)

\_\_\_\_\_

By:

\_\_\_\_\_

\_\_\_\_\_ (Name), \_\_\_\_\_ (Title)



## Final Waiver of Mechanic's Lien

The undersigned, having furnished material or labor for, or perform labor upon, a building or land for improvement, alteration or repair thereof, situated on or being real estate described as (legal description or street address):

---

---

---

For and in consideration of the sum of 0.00 and other valuable consideration, the receipt of which is hereby acknowledged, does hereby waive and release any and all liens, and rights or claim of rights to file and establish a mechanic's lien against the above described premises, for material furnished or labor performed.

This full and final lien waiver is intended as a full and complete waiver of any and all lien rights on said project or real estate, as a complete relinquishment of lien rights rather than as a receipt for partial payment, as an acknowledgment of final and full payment of the contract price and all allowable additions or extras, and an affirmation that the undersigned fully releases and discharges the owner (or contractor) of any further claim or obligation for payment of any kind.

The undersigned acknowledges and affirms that it has paid all employees, contractors, subcontractors, suppliers, materialmen, and laborers all payments, claims, and obligations due or that may be due and owing for all work, labor, or materials furnished for work on or improvement of the project.

The undersigned agrees to defend, indemnify, and hold harmless the payor and owner, its agents, employees, representatives, architects, engineers, and consultants from any and all costs, expenses, fees including attorney's fees, claims, demands, lawsuits, actions, liens, foreclosures, judgments, or executions that arise or may arise from claims, demands, or liens

of persons with whom the undersigned contracted for the performing of labor or services for the above-referenced project or any person or persons claiming by or through such a person.

Dated at \_\_\_\_\_ (*City and State*),

on the \_\_\_\_\_ day of \_\_\_\_\_ (*Month*), \_\_\_\_\_ (*Year*).

\_\_\_\_\_ (*Name of Contractor*)

\_\_\_\_\_ (*Address*)

\_\_\_\_\_

By:

\_\_\_\_\_

\_\_\_\_\_ (*Name*), \_\_\_\_\_ (*Title*)

## ***Section 7.04 Installment Purchase Contracts***

Often title to real estate is transferred by a contract for deed which permits the purchaser to take equitable title and possession of the property, while the seller retains the fee simple title. The contract will call for periodic payments, and upon completion of all payments, a deed conveying the property from the seller to the buyer is delivered. Numerous terms and conditions may be contained in the contract, but the concept of the seller retaining title while the buyer takes possession is the essential element of such a transaction.

Iowa law follows the “lien theory” of mortgage and not the “title theory” for real estate contracts. The seller is treated as a mortgagee and the buyer as a mortgagor. Therefore, liens recorded against the seller after the recording of the contract will not attach (unless the seller later regains the title), and all liens against the buyer attach when the contract is filed of record.

Since the contract establishes a real property interest, it is imperative that the contract be filed of record. The recorded contract gives constructive notice to third parties of the contract purchaser’s interest and the end of the contract seller’s interest (so long as the contract is fully complied with).

The Division will guarantee only the interest of the contract purchaser under an Owner Certificate. It is not appropriate to prepare an Owner Certificate covering both the contract seller (and assignee) and contract purchaser, as their interests may appear, or to issue a Lender Certificate to the contract seller.

The following guidelines should be used in the preparation of contract purchaser’s Commitment and Certificate:

1. In the Proposed Buyer or Guaranteed portion of Schedule A of the Commitment or Certificate, after the name of the Proposed Buyer or Guaranteed, the following should be added: *as contract purchaser(s)*.
2. In Item 2 of Schedule A of the Owner Certificate the vesting as a “fee simple” must be changed to a “contract” interest.
3. Do not issue a contract purchaser’s Certificate in the name(s) of the contract seller and contract purchaser “as their interests may appear.” Only the contract purchaser(s) should be the named Guaranteed.
4. In Item 4 of Schedule A of the Certificate, set forth a description of the contract as follows:

*The rights of the contract purchaser(s) in the Contract for Deed, dated \_\_\_\_\_, by \_\_\_\_\_, Seller(s), and \_\_\_\_\_, Buyer(s), is filed of record \_\_\_\_\_, in Book \_\_\_\_ at Page \_\_\_\_, (or Instrument No.\_\_\_\_), in the \_\_\_\_\_ County, Iowa, Recorder’s Office, for property described as follows [place legal description here]:*

Include any assignments by the buyer(s), if applicable.

5. All contracts for deed or recorded memoranda thereof must be set out as Special Exceptions in Schedule B of the Certificate. The following language is suggested:

*Terms, provisions, conditions, and limitations contained in Contract for Deed, dated \_\_\_\_\_, by \_\_\_\_\_, Seller(s), and \_\_\_\_\_, Buyer(s), is filed of record \_\_\_\_\_, in*

*Book \_\_\_\_ at Page \_\_\_\_, (or Instrument No. \_\_\_\_), in the \_\_\_\_ County, Iowa, Recorder's Office.*

6. An unrecorded purchase contract may not be the subject of a Certificate.

After the closing on the contract to purchase and completion of the Participating Attorney's final title opinion based upon an updated abstract certification or post-closing search certification, the contract purchaser is given an Owner Certificate. Do not issue a Commitment and leave that Commitment open until completion of the contract.

Upon completion of the contract, a new Owner Certificate may be desired, guaranteeing the contract purchaser as a fee simple titleholder. The Certificate may be issued only after delivery and recording of the deed from the contract seller to the contract purchaser. An updated abstract should be performed from the last abstract certification through the date and time of the recording of the deed, and a Participating Attorney's title opinion obtained. The Division's premium for such a Certificate is the minimum charge so long as the named Guaranteed under the new Owner Certificate is the same person as the named Guaranteed under the contract purchaser's Owner Certificate. In the alternative, a free Owner's Certificate may be issued when the contract purchaser obtains a mortgage to pay off the contract, and the Application for Title Guaranty is marked for "Owner's Coverage" and a "Lender 1<sup>st</sup> Mortgage."

Alternatively, if an Owner Certificate is not being obtained, the transaction may be listed as a "refinance" and charged the reduced refinance premium. Either abstracting or Forms 900 and 901 may be utilized for the refinance. Refer to section 8.01, "Non-Purchase Product."

Sometimes a contract purchaser is unable to keep up with the periodic payments required under the contract. If the contract purchaser is agreeable, he or she may voluntarily execute a quit claim deed and relinquish possession of the property, thereby evidencing the release of his or her interest in the property. This is somewhat like a deed in lieu of foreclosure, and the same dangers are apparent. First, there may be a question as to the fairness of the transaction, which effectively forfeits the contract purchaser's interest in the property. Also, since this is a voluntary conveyance, any lien that is attached to the contract purchaser's interest in the property would remain as a lien on the property subsequent to the re-conveyance to the contract seller. Extreme caution should be used any time there is a voluntary re-conveyance of the property by the contract purchaser to the contract seller.

More often, the contract purchaser will not cooperate in the termination of the contract. In this situation, if the contract allows, the contract seller will attempt to forfeit the buyer's interest in the contract. The seller will first serve a warning notice to the contract purchaser(s), parties in possession (if not the contract purchaser(s)), contract purchaser(s)' mortgagees of record, and any person who asserts a claim under the contract purchaser(s)' interest, except a governmental interest, in accordance with Iowa Code Chapter 656 providing for a 30-day period for payment by the contract purchaser(s) or a mortgagee of the real estate. If payment as demanded is not made, a copy of the warning notice, all proofs of service, and personal affidavits for service by publication must be filed of record, thereby providing constructive notice to all parties of the forfeiture and cancellation of said contract. Strict compliance with the law is required, therefore, a Participating Attorney must carefully review the contract, notice, and services set forth in the abstract.

Another method of termination of a contract would be a foreclosure pursuant to Iowa Code Chapter 654.

## **Sample Forms**

Copies of the Contract Purchaser(s) Commitment and the Contract Purchaser(s) Owner Certificate are shown on the following pages.



## Commitment Form Schedule A

Commitment Number: C-1000554

Borrower(s)/Buyers(s), For Reference Purposes Only: Kenneth Buyer and Crystal Buyer, as Contract Purchasers

Effective Date: March 30, 2007 at 08:00:00 AM

<u>1. Certificate or Certificates to be issued</u>	<u>Proposed Coverage Amount</u>	<u>File Number</u>	<u>Loan Number</u>
(a) <u>Owner Certificate</u>	\$100,000.00		

2. The estate or interest in the Land described or referred to in this Commitment is a fee simple (if other, specify same).

Fee Simple

3. Title to the estate or interest in said Land is at the Effective Date hereof vested in:

John Seller and Mary Seller

Note: The Division does not purport to guarantee whether the above parties hold title as joint tenants with full rights of survivorship and not as tenants in common or as tenants in common.

4. The Land referred to in this Commitment is described as follows:

Lot 1 in New Subdivision in Polk County, Iowa.

Title Guaranty Division

By *Loyd W. Ogle*

Loyd Ogle, Director

Prepared Kim Axtell

By (800) 432-7230

COMMITMENT NO.: C-1000554

DATE: 3/30/2007



## Commitment Form Schedule B

Commitment Number: C-1000554

I. Schedule B of the Certificate or Certificates to be issued will contain the following five Standard Exceptions and other matters listed below as exceptions 6, etc., unless the same are disposed of to the satisfaction of the Division:

1. Any right or claim of a party in possession not shown by the Public Records.
2. Notwithstanding the guaranteeing clauses of this Guaranty, the Division does not guarantee against any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land.
3. Any easement or claim of easement, not shown by the Public Records.
4. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Notwithstanding the guaranteeing clauses of this Guaranty, the Division does not guarantee against taxes or special assessments which are not shown as existing liens by the Public Records.
6. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Effective Date but prior to the date the Proposed Guaranteed acquires for value of record the estate or interest or Mortgage thereon covered by this Commitment.
7. Payment of the full consideration to, or for the account of, the grantors or mortgagors.
8. The lien of the taxes for the July 1, 2005 - June 30, 2006 fiscal year and thereafter, with the first half due on September 1, 2006 (delinquent after September 30, 2006) and the second half due on March 1, 2007 (delinquent after March 31, 2007). First installment paid. Second installment unpaid, but not delinquent.
9. Mortgages, restrictions, easements or any other lien or encumbrance on or defect in the Title to the property as follows:
  - a) Mortgage in favor of ABC Bank dated December 1, 2005 and filed of record December 2, 2005 in Book 2005 at Page 100, to secure an indebtedness of \$60,000.00.
  - b) Ordinances and regulations for the City of Des Moines and County of Polk, Iowa.
  - c) Plat(s) filed in the Polk County, Iowa, Recorder's Office, including easements, building setbacks, restrictions, reservations, and notations.
  - d) Declarations, covenants, restrictions, easements, reservations, rights, and options filed of record in the Polk County, Iowa, Recorder's Office.

COMMITMENT NO.: C-1000554

DATE: 3/30/2007

II. The following are the requirements to be complied with:

1. Instruments in form suitable for guaranty which must be executed, delivered, and duly filed for record:

a) Release of any claims or judgments against the buyers/borrowers that would be liens on their real estate.

b) Contract for Deed from John Seller and spouse, if any, and Mary Seller and spouse, if any, to Kenneth Buyer and Crystal Buyer, as Contract Purchasers, conveying the above described property.

2. Other clearance items:

a) Composite Mortgage Affidavit signed by the titleholders/buyers and sellers of the subject property and notarized.

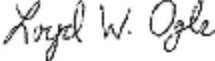
b) If mechanic lien claims may be filed of record, then mechanic lien waivers must be submitted for review.

Notes for Information:

1. Owner has been approved for the following endorsement(s): None

End of Schedule B.

Title Guaranty Division

By 

Loyd Ogle, Director

Prepared Kim Axtell

By (800) 432-7230

COMMITMENT NO.: C-1000554

DATE: 3/30/2007



## Owner Form Schedule B

Certificate Number: O-1000554

### Exceptions From Coverage

This Certificate does not guarantee against loss or damage (and the Division will not pay costs, attorneys' fees or expenses) that arise by reason of:

**Standard (notwithstanding the guaranteeing clauses of this Guaranty):**

1. Rights or claims of parties in possession not shown by the Public Records.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
3. Easements, or claims of easements, not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Taxes or special assessments which are not shown as existing liens by the Public Records.

**Special:**

6. The lien of the taxes for the July 1, 2006 - June 30, 2007 fiscal year and thereafter, with the first half due on September 1, 2007 (delinquent after September 30, 2007) and the second half due on March 1, 2008 (delinquent after March 31, 2008). None now due and payable.
7. Ordinances and regulations for the City of Des Moines and County of Polk, Iowa.
8. Plat(s) of subdivision filed in the Polk County, Iowa, Recorder's Office, including all easements, building setbacks, restrictions, reservations and notations.
9. Declarations, covenants, restrictions, easements, reservations, rights and options filed of record in Polk County, Iowa, Recorder's Office.
10. Terms, provisions, conditions and limitations contained in Contract for Deed, dated April 2, 2007, by and between John Seller and Mary Seller, husband and wife, Sellers, and Kenneth Buyer and Crystal Buyer, husband and wife, Buyers, is filed of record April 2, 2007, in Book 1 at Page 1, in the Polk County, Iowa, Recorder's Office.

End of Schedule B

CERTIFICATE NO.: O-1000554

DATE: April 02, 2007

Title Guaranty Division

By *Lloyd W. Ogle*

Lloyd Ogle, Director

Prepared Kim Axtell

By (800) 432-7230

CERTIFICATE NO.: Q-1000554

DATE: April 02, 2007

### ***Section 7.05 Guaranteeing a Fractional Interest***

If a Field Issuer is requested to issue a Certificate guaranteeing title in one or more, but not all, owners of a parcel of real estate, or to guarantee a mortgage made by fewer than all owners, the Field Issuer MUST raise the following exceptions on Schedule B of the Commitment and/or Certificate:

- 1. Rights of co-tenants to partition, contribution, and possession.*
- 2. The right of the United States government to sell the entire property to enforce a tax lien against any co-tenant of the Land.*
- 3. The right of a creditor, trustee, or debtor in possession to sell the entire property in the event of a bankruptcy of any co-tenant of the Land.*

Beware when the fractional interest is also the access to the property being covered as access may not be guaranteed. In this situation the Field Issuer should raise an access exception on Schedule B. Refer to section 7.01 of this Article, "Access."

## ***Section 7.06 Encroachments and Extended Coverage***

Standard coverage in the Owner Certificate includes Standard Exception No. 2 in Schedule B, which excludes coverage for any type of encroachment by an improvement from the guaranteed property onto adjoining land or any type of encroachment by an improvement from adjoining land onto the guaranteed property. Standard Exception No. 2 reads as follows:

*Notwithstanding the guaranteeing clauses of this Guaranty, the Division does not guarantee against any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land.*

The guaranteed property, or “Land” as defined in the Certificate jacket is “The land described in Schedule A, and affixed improvements that by law constitute real property. The term ‘Land’ does not include any property beyond the lines of the area described in Schedule A, ....” Thus, the standard Owner Certificate does not provide coverage for any encroachments. Issuing the Owner’s Standard Exception Waiver Endorsement, which deletes the Five Standard Exceptions, provides encroachment coverage, unless an encroachment is raised on Schedule B of the Owner Certificate. Unlike the Owner Certificate, the Lender Certificate deletes all Standard Exceptions, which includes Standard Exception No. 2, providing encroachment coverage automatically, unless a specific Special Exception for an encroachment is raised on Schedule B of the Lender Certificate. This section will discuss those situations where some type of encroachment coverage is provided to the Guaranteed under the Owner or Lender Certificate.

### **Requirements to Issue a Certificate**

To issue a Certificate with encroachment coverage, the Field Issuer must be assured that there are no encroachments from or upon the guaranteed property. To obtain this assurance, the following requirements must be met for commercial (residential building with more than six units, industrial property, office building, commercial condominium, business property, agricultural property, vacant property) and residential (single family building, residential building of six units or less):

#### ***Commercial***

The Division should be provided a land survey made in accordance with the “Minimum Standard Detail Requirements for Land Title Surveys as adopted by the American Title Association Congress on Surveying and Mapping,” dated within three months of the date of the Commitment and naming the “Title Guaranty Division” as an addressee. For Certificate coverage under \$500,000.00, a survey meeting all of these requirements, but not certified, may be acceptable if approved by the Division.

For a refinance of a commercial property, the titleholder(s) may provide an ALTA Land Title Survey less than five years old if they are able to execute and attach to the survey the Division’s Affidavit of No New Improvements. Refer to Section 4.11, Article IV, “Division Forms,” for this Affidavit.

#### ***Residential***

##### ***1. Lender Certificate***

The Division encourages the use of a current drawing, often referred to as a Real Property Inspection Report (“RPIR”), or “Mortgage Survey,” showing the boundary lines, the location of

any improvements relative to property lines, easements, building setback lines, and property dimensions, in connection with the issuance of a residential Lender Certificate, since the Guaranteed will be protected against loss due to encroachments or violations of building restrictions.

Although the Division strongly suggests that an appraisal be obtained on all transactions, it is not required for most residential loan transactions. If the requested lender coverage is \$500,000.00 or less, and the residential property covered by the mortgage to be guaranteed is less than 40 acres, no appraisal is required. However, transactions involving new or recent construction will require an appraisal, RPIR, or survey to verify the completion of the residence and all related improvements. If a Location Endorsement is to be issued, the Division requires evidence from a current appraisal, or current information obtained from the assessor's office in the county in which the property is located, that there is a house, including its address, located on the property covered by the Guaranteed Mortgage.

If the requested lender coverage exceeds \$500,000.00, a current drawing or RPIR of the legal description showing dimensions, property lines, all improvements, building setback lines, easements, and encroachments must be ordered. In most cases, if there is a prior drawing or RPIR for the property, the Division will accept an Affidavit of No New Improvements showing no improvements have occurred on the property or adjacent properties since the last drawing was done. Refer to section 4.11, Article IV, "Division Forms" for this Affidavit.

If significant doubts as to the existence of encroachments cannot be resolved, a formal survey should be ordered. The survey should be conducted by a registered land surveyor and should show the boundaries of the property in question and the location of all improvements and permanent monuments thereon, as well as the location of any adjoining streets, alleys, or public ways, and any easements or setback lines involved. Any encroachments, overlaps, or violations of building restrictions disclosed by the survey must be set out as exceptions in the Commitment and Certificate, unless the Division has stated that they are waived or may be guaranteed over.

## **2. *Owner Certificate***

- a. For coverage of \$500,000.00 or less, the Field Issuer must obtain a formal survey showing the boundary lines, the location of all improvements relative to the property lines, easements, building setback lines, property dimensions, signs of possession, and possible encroachments. The survey must be dated within three months of closing.
- b. For coverage over \$500,000.00, the Field Issuer must obtain a survey made in accordance with the "Minimum Standard Detail Requirements for Land Title Surveys as adopted by the American Land Title Association Congress on Surveying and Mapping." The survey must be dated within three months of closing and must name the "Title Guaranty Division" as an addressee.

## ***All Transactions***

Remember that the Division's Affidavit of No New Improvements is used only for the issuance of a Lender Certificate for a refinance. The Affidavit of No New Improvements may not be used to issue an Owner Certificate that includes survey coverage.

If a new legal description is being covered for unsubdivided land, the Division must be provided a formal survey by a surveyor showing the boundary lines, the location of any improvements relative to the property lines, easements, building setback lines, property dimensions, and possible encroachments.

The All Purpose CMA must be fully completed and executed by the sellers and buyers/borrowers when possible or known encroachments exist. Any encroachments disclosed must be specifically raised on Schedule B as Special Exceptions.

Upon obtaining the applicable appraisal, survey, drawing, and affidavit(s), the Certificate may be issued without reference to encroachments if none are disclosed. If the documentation required discloses an encroachment from the adjoining property onto the guaranteed property, or an encroachment from the guaranteed property onto an adjoining property or easement, the encroachment must be raised in the Commitment and Certificate.

### **Affirmative Encroachment Coverage**

A buyer and/or a lender may request that the Division “guarantee over” an encroachment by providing an affirmative comprehensive or encroachment endorsement which guarantees against loss or damage the Guaranteed may suffer by reason of the known encroachment, as shown on Schedule B. Such coverage will only be provided in strict accordance with the procedures for a Lender Certificate or an Owner Certificate as set forth below.

### **Lender Certificate Encroachments**

#### ***1. From the Guaranteed Property***

The Division is more tolerant in guaranteeing over encroachments onto adjoining property for Lender Certificates than for Owner Certificates. Since a Lender Certificate guarantees the validity and priority of the Guaranteed Mortgage, the Division would not receive a claim by the lender unless there is a mortgage default, a foreclosure action filed, and a sale of the guaranteed property at below market value because of the encroachment.

Therefore, a Field Issuer may guarantee, without the approval of the Division, over any residential encroachment onto adjoining property by a fence, walkway, driveway, shed, house, garage, overhanging eave, concrete stoop, or porch without foundation, regardless of size or length of time the encroachment has existed.

For commercial and other non-residential property, the Field Issuer must contact the Division Underwriting Department for written approval to issue the Comprehensive-1, -2, or -3 Endorsements or the Encroachment Endorsement guaranteeing over an encroachment of more than five feet onto adjoining property.

#### ***2. Building Line Violations***

A Field Issuer may guarantee over private (not governmental) building line violations without the approval of the Division under the following conditions:

- a. The encroachment is less than 20 percent of the required setback; and
- b. The encroachment has existed for at least five years.

Otherwise, the Field Issuer must contact the Division’s Underwriting Department for written approval to issue the Comprehensive-2 Endorsement or the Encroachment Endorsement.

#### ***3. Onto Easements Located Within the Guaranteed Property***

A Field Issuer may guarantee, without the approval of the Division, over any residential encroachment onto utility easements by permanent and non-permanent improvements (fence, driveway, shed) less than one-half the width of the easement. Otherwise, the Field Issuer must contact the Division’s Underwriting Department for written approval to issue the

Comprehensive-2 Endorsement or the Encroachment Endorsement.

#### ***4. Onto Guaranteed Property***

A Field Issuer may guarantee, without the approval of the Division, over any neighboring improvement adversely encroaching onto the subject property where the encroachment is five feet or less.

If the encroachment is more than five feet, the Field Issuer must contact the Division's Underwriting Department for written approval to issue the Encroachment Endorsement - Adverse.

### **Owner Certificate Encroachments**

#### ***1. From the Guaranteed Property Onto Nonpublic Property***

The Division must be conservative in guaranteeing over encroachments onto adjoining property for Owner Certificates as there is a greater risk of disputes between neighbors that could lead to an immediate claim.

A Field Issuer may guarantee, without the approval of the Division, over an encroachment onto adjoining property by a walkway, driveway, or permanent improvement (house or garage) where the encroachment is one foot or less and the improvement has existed without permission of the adjoining titleholder for more than 10 years. This authority applies only for residential property.

For residential encroachments over one foot, or for any commercial and other non-residential property encroachments onto adjoining property, the Field Issuer must contact the Division's Underwriting Department for written approval to issue the Comprehensive-5 Endorsement or the Encroachment Endorsement.

#### ***2. From the Guaranteed Property Onto Public Property***

The Field Issuer must contact the Division's Underwriting Department for written approval to issue the Comprehensive-5 Endorsement or the Encroachment Endorsement guaranteeing over any encroachment onto public property.

#### ***3. Building Line Violations***

The Field Issuer may guarantee over private (not governmental) building line violations without the approval of the Division under the following conditions:

- a. The encroachment is less than 20 percent of the required setback; and
- b. The encroachment has existed for at least five years.

Otherwise, the Field Issuer must contact the Division's Underwriting Department for written approval to issue the Comprehensive-5 Endorsement or the Encroachment Endorsement.

#### ***4. Onto Easements Located Within the Guaranteed Property***

A Field Issuer may guarantee, without the approval of the Division, over any encroachment onto utility easements by permanent improvements (house or garage) where the encroachment is one foot or less. If the encroachment onto the easement is larger than one foot or if the encroachment is by a non-permanent improvement (driveway, shed) the Field Issuer must contact the Division's Underwriting Department for written approval to issue the Comprehensive-5 Endorsement or the Encroachment Endorsement. The Division is not likely to guarantee over any non-permanent improvement encroachment onto an easement for an Owner Certificate.

### ***5. Onto Guaranteed Property***

An encroachment endorsement can never be issued for an encroachment by neighboring improvements. The Guaranteed Owner would be able to submit an immediate claim if an encroachment endorsement was issued for an adverse encroachment. The Field Issuer must raise the adverse encroachment as a Special Exception in Schedule B of the Owner Certificate, and the Field Issuer cannot issue the Encroachment Endorsement - Adverse guaranteeing over or waiving said encroachment.

### **Obtaining Division Approval**

Various factors enter into the underwriting determination as to whether or not an encroachment can be guaranteed over. When you are required to obtain the Division's permission to issue a comprehensive or encroachment endorsement, please obtain the following information before contacting the Division's Underwriting Department:

1. The size of the encroachment;
2. The length of time the encroachment has existed;
3. Whether the encroaching improvement is fixed or non-permanent;
4. Whether other similar encroachments exist in the subdivision or neighborhood;
5. Whether the encroachment was intentional;
6. Whether anyone has objected to the encroachment; and
7. Any other relevant facts.

### ***Section 7.07 Proper Endorsement Procedure***

When issuing an encroachment endorsement, a comprehensive endorsement, or the Standard Exception Waiver Endorsement, the Field Issuer should:

1. Make sure that prior Division authorization for the issuance of the endorsement has been obtained, if required.
2. Raise the encroachment as a Special Exception in Schedule B of the Certificate. The Field Issuer should also set forth the source for the encroachment and the nature, location, and size of the encroachment.
3. Attach the appropriate endorsement form to the Certificate.
4. Complete the Encroachment Endorsement or the Encroachment Endorsement - Adverse by inserting the Schedule B Special Exception Number(s) in the blank on the endorsement form.

### ***Section 7.08 Summary of Rules for Encroachment Endorsements***

<b>TYPE OF ENCROACHMENT</b>	<b>OWNER CERTIFICATE</b>		<b>LENDER CERTIFICATE</b>	
	<b>Attorney Decision</b>	<b>Title Guaranty Approval</b>	<b>Attorney Decision</b>	<b>Title Guaranty Approval</b>
<b>Encroachment onto premises:</b>				
1. Five feet or less	1. No	1. No	1. Yes	1. N/A
2. More than five feet	2. No	2. No	2. No	2. Yes
<b>Encroachment from premises:</b>				
1. Any residential fence, driveway, shed w/o foundation, overhanging eaves, concrete stoop, porch w/o foundation, permanent improvements; under five feet for commercial and non-residential;	1. N/A	1. N/A	1. Yes	1. N/A
2. If commercial and non-residential encroachment is five feet or over	2. N/A	2. N/A	2. No	2. Yes
3. Residential encroachment of one foot or less and existing for more than 10 years w/o permission onto non-public property	3. Yes	3. N/A	3. N/A	3. N/A
4. Residential encroachment over one foot; or any commercial or non-residential encroachments onto non-public property	4. No	4. Yes	4. N/A	4. N/A
5. Any encroachment onto any public property	5. No	5. Yes	5. N/A	5. N/A
<b>Private building line violations:</b>				
1. Encroachment less than 20 percent of setback and existed five years	1. Yes	1. N/A	1. Yes	1. N/A

2. Encroachment more than 20 percent of setback or existed less than five years	2. No	2. Yes	2. No	2. Yes
<b>Encroachment onto utility easements:</b>				
1. By permanent or non-permanent residential improvements	1a. N/A	1a. N/A	1a. Yes	1a. N/A
a) less than one-half of the easement	1b. N/A	1b. N/A	1b. No	1b. Yes
b) one-half or more of the easement				
2. Permanent improvements (house or garage) by one foot or less	2. Yes	2. N/A	2. N/A	2. N/A
3. Permanent improvements larger than one foot or any non-permanent improvement	3. No	3. Yes	3. N/A	3. N/A

### ***Section 7.09 Checklist for Issuance of a Certificate***

1. The abstract is updated and certified by a Participating Abstractor. For Non-Purchase Product, Rapid Certificate, and Closing Protection Letter transactions, refer to Section VIII, “Procedures and Requirements for New Title Guaranty Programs,” herein.
2. The abstract is examined by a Participating Attorney in accordance with the most current Iowa Title Standards, where applicable, with particular attention to indications concerning access.
3. The preliminary title opinion is issued. When a Participating Attorney issues the Commitment, a written preliminary title opinion is not required.
4. The file, including communications with the lender, is reviewed to determine whether:
  - a. A survey is advisable or has been requested.
  - b. There has been recent construction work.
  - c. There is any need to inquire about rights of third parties in possession.
  - d. Particular Endorsements should be purchased.
  - e. Other documentation is needed.
5. The Commitment is entered in CAP in conformance with Division underwriting standards, procedures, and requirements, and with proper notation of requirements concerning:
  - a. RPIR, drawing, survey, or statement from appraiser;
  - b. CMA;
  - c. Mechanic’s lien waivers or affidavits;
  - d. Further investigation or documentation of rights of parties in possession;
  - e. Access questions;
  - f. Clearance matters; and
  - g. Documents to be filed.
6. The Commitment form is distributed as follows:
  - a. The original Commitment Schedules A and B, plus a Commitment jacket, are sent to the lender and/or owner requesting coverage.
  - b. Executed copies of Commitment Schedules A and B are placed in the client file.
7. Prior to or after closing, proper instruments affecting title (including deeds, mortgages, releases, contracts, leases, easements, affidavits, and corrective documents) needed to satisfy the “requirements” set forth in the Commitment (if any) or preliminary title opinion are filed.
8. The abstract is again continued and certified or a post-closing search is certified by the Participating Abstractor.
9. The re-certified abstract or post-closing search certification is examined by the Participating Attorney.
10. The final title opinion is issued. When a Participating Attorney issues the Certificate(s), a written final title opinion is not required.
11. The Owner and/or Lender Certificates are entered in CAP in conformance with Division underwriting standards, procedures, and requirements and executed, with particular attention to the following:
  - a. Coverage should only be provided for the purchase and/or financing; therefore, the Date of the Certificate(s) should only cover the transaction which is the date and time of the filing of the deed(s) and mortgage(s).
  - b. Exceptions from the Commitment form not corrected will be shown as Special Exceptions in Schedule B, unless covered by Endorsements.
  - c. New matters of record from the abstract/search should be included in the appropriate section of Schedule B.
12. All necessary Endorsements are entered in CAP.

13. The originals of Lender and/or Owner jacket(s), Certificate Schedules A and B, and the originals of the Endorsements are executed, printed, and mailed to the Owner or Lender, as appropriate.
14. A check payable to the "Treasurer, State of Iowa" from the lender, closer, or attorney for the amount of the premium is sent to the Division.
15. Any other supporting documentation for auditing purposes or unusual transactions, as needed, to issue the Commitment, Certificate(s), and Endorsement(s) are forwarded to the Division.

### ***Section 7.10 Model Title Opinions***

Model preliminary and final title opinions are outlined in the following pages.

Model Preliminary Title Opinion

LETTERHEAD

Date

**Attention:  
Title Guaranty Division  
2015 Grand Avenue  
Des Moines, IA 50312**

And

RE:

Dear \_\_\_\_\_ :

The undersigned has examined (abstracts of title) (Form 900) purporting to reflect the contents of such records relative to said land, which abstracts are deemed sufficiently complete and worthy of confidence, and that said examination began with a well recognized source of good title and covered a period which, in the opinion of the undersigned, and in accordance with the practice of competent Iowa title attorneys, is deemed sufficient to establish good title. After such examination, it is the opinion of the undersigned that, subject only to the matters shown under Schedules B and C hereof, a good and merchantable **fee simple** title with **no** lack of a right of public access to the premises described in Schedule A hereof was, at the date of this opinion, indefeasibly vested in:

(Note: The participating attorney shall complete the bold type in regard to status of title and as to whether there is public access to the premises.)

That the undersigned has examined the abstract of title last certified by \_\_\_\_\_, Title Guaranty Member No. \_\_\_\_\_, last continued to \_\_\_\_\_.

**SCHEDULE A**

The abstract covers the real estate described as: \*

\*(Note: If the legal description is lengthy you may want to set up a separate page labeled **Schedule A, Legal Description**, and refer to “attached Schedule A Legal Description” above.)

## **SCHEDULE B-I**

If there are no liens, encumbrances, or objections of the type described, list NONE after each item. If objections are noted, they should be set forth in full including recording dates and document numbers after the applicable item with any requirements for the deletion of the lien, encumbrance or objection.

1. The lien of the taxes for the July 1, 20\_\_ - June 30, 20\_\_ fiscal year (due and payable in the following fiscal year) and thereafter. (Explain whether due, paid or delinquent):
2. Special Assessments:
3. Mortgage(s) and Assignment(s):
4. Leases or Land Contracts (recorded or known):
5. Plats of survey or subdivisions (identify matters such as roads, easements, building setback lines, etc.):
6. Easements, Agreements and Encroachments (recorded or known) and locate:
7. Restrictive Covenants, Conditions, Restrictions and/or Reservations:
8. Ordinances and Regulations:
9. Oil or Mineral Rights:
10. Mechanic's Liens:
11. Lis Pendens Notices or Other Notices:
12. Probate Proceedings:
13. Estate and Inheritance Taxes (Federal and State):
14. Judgments or Liens (including court costs, fines, penalties), Bankruptcy Proceedings or Suits Pending vs. Titleholders (past or present):
15. Judgments or Liens (including court costs, fines, penalties), Bankruptcy Proceedings or Suits Pending vs. Buyers:
16. Other Liens, Objections, and Defects:

**SCHEDULE B-II**

Recordation of the following duly executed and delivered instruments sufficient to create the estate or interest proposed:

1. Deed:
2. Mortgage:
3. Release:
4. Other:

### **SCHEDULE C**

Matters not covered by this opinion:

1. Rights or claims of parties in possession not shown by the public records.
2. Any encroachments, overlaps, boundary line disputes, easements, measurements, variations in area or content, party walls, or any other matters that an accurate survey and inspection of the premises would disclose.
3. Roads, ways, streams, or easements, not shown by the public records, riparian or water rights, and the title to any filled-in lands.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Taxes or special assessments that are not shown as existing liens by the public records.
6. Defects, liens, encumbrances, adverse claims, or other matters, if any, created, first appearing in the public records, or attaching subsequent to the Effective Date hereof but prior to the date the covered party acquires for value of record the estate or interest or mortgage thereon covered by this Opinion.
7. Restrictions as to building, occupancy, or usage contained in applicable zoning or other city or county ordinances.
8. Rights of access to and from highways and streets that may be designated as “controlled access facilities” by state or city authorities.
9. Rights of trustees in bankruptcy to set aside transfers of interest in real estate by bankrupt within one year prior to bankruptcy for inadequate consideration.
10. Environmental contamination of land now prohibited by Federal and State laws and regulations.
11. Matters of record not shown in the abstract(s).

Preliminary Opinion

Date

Page 5

This Opinion is for the benefit of the addressees only. No other persons are entitled to rely hereon.

Sincerely yours,

[Signature Is Required]

---

Participating Attorney - TGD Member No. \_\_\_\_  
Address

LETTERHEAD

Model

Continuation of Preliminary Title Opinion Dated \_\_\_\_\_  
(Final Opinion)

Date

**Attention:**

**Title Guaranty Division  
2015 Grand Avenue  
Des Moines, IA 50312**

And

RE:

Dear \_\_\_\_\_ :

I have made a final examination of the (Abstract of Title) (Form 901) (pre-closing search certification) (post-closing search certification) from \_\_\_\_\_ (effective date of search shown on my preliminary opinion) ending with Abstract No. \_\_\_\_\_, prepared by \_\_\_\_\_, (Abstractor, Title Guaranty Member No. \_\_\_\_\_) who has certified that it reflects all matters up to \_\_\_\_\_ and covers the following described real estate:

(Legal description from the preliminary opinion)

As of that date we find from our examination that good and marketable title to the property described above is held in **fee simple** by:

Subject to all matters disclosed on Schedule B, with the following amendments:

A. Schedule B-I liens, encumbrances, or objections to be deleted in their entirety (disclose by paragraph number and sub-item):

Final Opinion

Date

Page 2

B. Schedule B-I liens, encumbrances, or objections to be amended as follows:

1. The lien of the taxes for the July 1, 20\_\_ - June 30, 20\_\_ fiscal year (due and payable in the following fiscal year) and thereafter. (Explain whether, due, paid or delinquent):

C. New Schedule B-I liens, encumbrances, or objections hereby adopted:

1. Mortgage and Assignment:

D. Schedule B-II is hereby deleted unless stated otherwise below:

This Opinion is for the benefit of the addressees only. No other persons are entitled to rely hereon.

Sincerely yours,

[Signature Is Required]

---

Participating Attorney - TGD Member No. \_\_\_\_  
Address

## **Article VIII: Procedures and Requirements for New Title Guaranty Programs**

The Division has modernized and updated how Title Guaranty is issued in order to provide a faster and more economical Product for lenders and titleholders. Three enhancements have recently been made to the Program to meet these needs. The “Non-Purchase Product” is a short form of abstracting for residential refinancings or junior mortgages. Another enhancement, the “Rapid Certificate,” enables a Field Issuer to quickly issue a Certificate before a paid lien is released and satisfied. Lastly, Closing Protection Letters are available to Division Closers. CPL’s may indemnify lenders and owners against loss of settlement funds due to the acts or omissions of Division Closers, including theft of settlement funds and failure to comply with written closing instructions. All three of these enhancements are more fully described in this Article.

## ***Section 8.01 Non-Purchase Product***

The Non-Purchase Product is defined in 265 IAC 9.3 as a refinanced or junior residential mortgage securing an indebtedness of not more than \$500,000.00 and allows a “title guaranty report of title” search for a Non-Purchase Product transaction. The Division has generated a Title Guaranty Report of Title (hereinafter referred to as “Division Form 900”) and a Title Guaranty Report of Title – Post Closing Search (hereinafter referred to as “Division Form 901”) in lieu of an updated abstract certification when a Non-Purchase Product Commitment and Certificate are issued.

This Product was designed for a simple and uncomplicated residential property where the owner desires to quickly refinance, add a second mortgage, or refinance a purchase installment contract. Therefore it follows that a Division Form 900 should take less time to prepare than an update of the abstract and the search cost should be less expensive.

The cost to obtain a Lender Certificate for the Non-Purchase Product is only \$90.00. Remember, the \$90.00 refinance rate applies when either the Division Form 900 or an updated abstract is used.

### **Procedure for Using Division Forms 900 and 901**

The applicant may request Division Forms 900 and 901 from a Participating Abstractor if the proposed mortgage is a refinance or junior mortgage securing \$500,000.00 or less for a residential (1-6 living units) property. Easements, conditions, and other restrictions or reservations of record need not be searched; therefore, the applicant must be sure that the lender is willing to accept a Lender Certificate generally excepting these items. The Participating Abstractor will prepare Division Forms 900 and 901 by following the instructions provided by the Division for said forms.

A Participating Attorney will examine Division Forms 900 and 901 and prepare the preliminary and final title opinions. The form of search, whether a 40-year abstract of title or Division Forms 900 and 901, must be disclosed in the Participating Attorney’s title opinion.

The Division or a Field Issuer, who obtains a Participating Attorney’s title opinion based upon a search provided by Division Forms 900 and 901, may issue Commitments and/or Certificates. An attorney participating in the field-issuance program may replace title opinions with the Commitment and/or Certificate.

The following general exceptions shall appear on Schedule B of the Lender Commitment and/or Certificate when the Non-Purchase Product is used:

- The lien of the taxes for the July 1, 20\_\_ - June 30, 20\_\_ fiscal year (first installment due and payable September 30, 20\_\_ and second installment due and payable March 30, 20\_\_ of the following fiscal year) and thereafter. None yet due and payable.
- Ordinances and regulations for the City of \_\_\_\_\_ and County of \_\_\_\_\_, Iowa.
- Plat(s) filed in the \_\_\_\_\_ County, Iowa, Recorder's Office, including easements, building setbacks, restrictions, reservations, and notations.
- Declarations, covenants, restrictions, easements, reservations, rights, and options filed of record in the \_\_\_\_\_ County, Iowa, Recorder’s Office.

In addition, all exceptions regarding title and the requirements to clear those exceptions must be raised in Schedule B of the Lender Commitment. If these exceptions are not cleared, they will remain on Schedule B of the Lender Certificate.

The applicant will provide the Division the information and documents required for the issuance of the Lender Certificate as set forth under Article II, "Information and Documents Required for Division Issuance." All Programs, such as Gap Endorsement, Rapid Certificate, and Closing Protection Letter, are available when Division Forms 900 and 901 are used for the issuance of the Lender Certificate.

The Participating Attorney will retain copies of completed Division Forms 900 and 901 in a title file for a period of 10 years after the effective date of the Lender Certificate for the Division's review, pursuant to 265 IAC 9.6(2)(g). Likewise, pursuant to 265 IAC 9.6(4)(b), the Participating Abstractor shall retain written or electronic copies of completed Division Forms 900 and 901 prepared for a Lender Certificate, which shall be made available to the Division upon request.

### **Instructions for Preparation of Division Forms 900 and 901**

Upon receipt of a non-purchase order for a Lender Commitment and/or Certificate, the Participating Abstractor should confirm that the property is being assessed for residential taxes. If the property is not residential, the applicant should be informed that Division Forms 900 and 901 are not acceptable for Lender Commitment and/or Certificate issuance, and that the abstract of title must be found and delivered to the Participating Abstractor for continuation. A Participating Abstractor must utilize Division Forms 900 and 901, which contain the following:

1. A complete legal description, correct address (street name and city or town) for said legal description, and county. Abbreviated descriptions are not acceptable.
2. Property search commencing with the filing date of a borrower (or vendor – if there is a real estate installment contract) deed showing documentary transfer tax computed on the full value of the property, hereinafter referred to as "full value deed." Other types of instruments that are not full deed(s) for value, i.e., installment purchase contract, quit claim, sheriff, and tax, are not acceptable for basing the timeline of the search. The full value deed and all conveyances thereafter must be disclosed, but prior questionable or explanatory conveyances should also be disclosed. When listing the deeds, the search should list the names exactly as they are listed in the deed and the recording information of the deed.
3. Instruments reported must identify the document, the parties, recording information, and appurtenant facts or copies thereof must be included with the search. Instruments include, but are not limited to, mortgages and assignments.
4. If court proceedings are pending, a description of the action, parties, and minutes, or copies thereof included with the search that shall be in compliance with the "Abstracting Standards" of the Iowa Land Title Association.
5. Information regarding the current tax status of the property, including real estate taxes and special assessments.
6. Minimum 10-year name searches for the grantees found in the full value deed and any subsequent deeds found in the search required in paragraph 2 above.
7. After closing and recording of the refinance or junior mortgage, the Participating Abstractor will prepare the Division Form 901 covering this recording. Any changes in the title record since the original search report must be disclosed in Division Form 901. Assignments, releases, and other clearance documents recorded after the mortgage to be guaranteed may be

shown by addendum to the Division Form 900.

8. The Participating Attorney or applicant may request additional information.
9. The Participating Abstractor may include additional information deemed prudent and/or necessary.

## Instructions for Completing Division Form 900

1. Insert the name and address of the lender.
2. Insert the name of the county in which the property is located.
3. Insert the abstractor's reference or file number.
4. Insert the mortgage loan number, if available.
5. Type in the complete legal description of the property being searched.
6. Type in the complete property/street address of the property being searched.
- 6.5 Insert the type of borrower (or vendor – if there is a real estate installment contract) full value deed.
7. Insert the name(s) of the titleholder(s).
8. Insert how the titleholder(s) currently hold title, i.e., joint tenants with full rights of survivorship and not as tenants in common, tenants in common.
9. Insert the name(s) of the titleholder(s) who conveyed the property to the current titleholder(s).
10. Insert how the previous titleholder(s) held title, i.e., husband and wife, a single person.
11. Insert the date the deed was signed.
12. Insert the date the deed was recorded.
13. Insert the recording information of the deed, including the book and page number or document/instrument number.
14. Insert all conveyances thereafter contained in the search which commences from the execution date of borrower deed for full value.
15. Insert the type of mortgage, i.e., first, second, open-end, variable rate, construction.
16. Insert the name of the lender.
17. Insert the name(s) of the borrower(s).
18. Insert the marital status of the borrower(s), i.e., husband and wife, a single person.
19. Insert the date the mortgage was signed.
20. Insert the date the mortgage was recorded.
21. Insert the recording information, including the book and page number or document/instrument number.
22. Insert the amount of the mortgage.
23. Add any additional mortgages, installment contracts, or other liens, as well as any assignments or modifications of the mortgage described in the preceding section.
24. Insert the case number of any proceeding, lien, etc., found; the caption of the case as party vs. party; the date entered; the amount of the judgments, costs, interest, and penalties, if applicable; and/or other appurtenant information.
25. Insert the year of the past fiscal year's taxes that have been paid current.
26. Insert the current fiscal year for taxes.
27. Insert the total amount of the taxes assessed for the current fiscal year.
28. Insert the amount of the first installment due.
29. State whether the first installment of taxes has been paid, due, delinquent, or not yet certified.
30. Insert the amount of the second installment of taxes due.
31. State whether the second installment of taxes has been paid, due, delinquent, or not yet certified.
32. Insert the Permanent Tax Parcel Number(s) of the property, if possible.
33. Insert the year and amount of the county assessor's most current assessed value of the property.
34. Check the appropriate box to indicate whether the assessor lists taxes as residential.
35. Insert the day the search was completed.
36. Insert the month the search was completed.
37. Insert the year the search was completed.

38. Insert the time, including the hour, minute, and second that the search was completed.
39. Insert the name of the county.
40. Insert the Participating Abstractor's Title Guaranty Number, name, and address.
41. Sign the Division Form 900. The form must be signed by the Participating Abstractor.

**Title Guaranty  
Report of Title  
Division Form 900**

TO: \_\_\_\_\_1\_\_\_\_\_ (Name and Address)

We furnish the following information of record in \_\_\_\_\_2\_\_\_\_\_ County, Iowa:

Abstract No. or Reference No.: \_\_\_\_\_3\_\_\_\_\_; Loan No.: \_\_\_\_\_4\_\_\_\_\_

Legal Description: 5

Property Address: 6

Borrower (Or Vendor – If There Is A Real Estate Installment Contract) Full Value Deed:

\_\_\_\_\_6.5\_\_\_\_\_ Deed conveys the hereinafter described real estate to:

\_\_\_\_\_7\_\_\_\_\_, as \_\_\_\_\_8\_\_\_\_\_, from

\_\_\_\_\_9\_\_\_\_\_, as \_\_\_\_\_10\_\_\_\_\_, dated \_\_\_\_\_11\_\_\_\_\_ and filed

\_\_\_\_\_12\_\_\_\_\_ in Book/Page or Instrument/Document No. \_\_\_\_\_13\_\_\_\_\_.

14

Unreleased Mortgages and Assignments:

\_\_\_\_\_15\_\_\_\_\_ Mortgage in favor of \_\_\_\_\_16\_\_\_\_\_ from \_\_\_\_\_17\_\_\_\_\_

\_\_\_\_\_ as \_\_\_\_\_18\_\_\_\_\_ dated \_\_\_\_\_19\_\_\_\_\_,

filed \_\_\_\_\_20\_\_\_\_\_, in Book/Page/ or Instrument/Document No.

\_\_\_\_\_21\_\_\_\_\_, to secure an indebtedness of \$\_\_\_\_\_22\_\_\_\_\_.

23

Court Proceedings, Judgments, Liens, Etc.: 24

Taxes and Special Assessments:

General Taxes for the year \_\_25\_\_ and prior years, paid.

General Taxes for the year \_\_26\_\_, \$\_\_27\_\_,

First one-half, \$\_\_28\_\_\_\_; 29\_\_\_\_;

Second one-half, \$\_\_30\_\_\_\_, \_\_\_\_31\_\_\_\_.

Parcel No. \_\_\_\_32\_\_\_\_

\_\_\_\_33\_\_\_\_ Assessed Value: \$\_\_33\_\_\_\_

assessed residential: \_\_34\_\_ YES \_\_34\_\_ NO

This report is given solely for the purpose of issuance of a Lender Certificate by the Title Guaranty Division, 2015 Grand Avenue, Des Moines, IA 50312, on above mortgagee's loan and is not intended to be used for sale or transfer. No liability for errors or omissions will accrue to the benefit of any other person, firm or corporation. No report is made of instruments or proceedings not within the listed categories. Judgment and lien search has been made against all parties within the search pursuant to Title Guaranty requirements. This report is not a guaranty of title, or a statement as to the legality of sufficiency of any instrument or proceeding inspected in the search of the above real estate.

Search ending on \_\_\_\_35\_\_\_\_ day of \_\_\_\_36\_\_\_\_, 20\_\_37\_\_ at \_\_\_\_38\_\_\_\_

A.M./P.M., \_\_\_\_39\_\_ County, Iowa.

TGD # \_\_\_\_40\_\_\_\_

Abstractor Name

Address

By \_\_\_\_41\_\_\_\_

(Authorized Signature)

DIVISION FORM 900 PRINT 01/2006

## **Instructions for Completing Division Form 901**

42. Insert the name and address of the lender.
43. Insert the name of the county in which the property is located.
44. Insert the abstractor's reference or file number.
45. Insert the mortgage loan number, if available.
46. Insert the date and time, including the hour, minute, and second, of the previous Division Form 900.
47. Type in the complete legal description of the property being searched.
48. Type in the complete property/street address of the property being searched.
49. Insert the name(s) of the titleholder(s).
50. Insert the following information regarding the mortgage to be covered by the Lender Certificate, or attach copies of the recorded or filed documents:
  - a. The name of the lender.
  - b. The name(s) of the borrower(s).
  - c. The marital status of the borrower(s), i.e., husband and wife, a single person.
  - d. The date the mortgage was signed.
  - e. The date the mortgage was recorded.
  - f. The recording information of the mortgage, including the book and page number or document/instrument number.
  - g. The amount of the mortgage.Also insert update of taxes, additional affidavits, judgments, satisfactions, releases, mortgages, assignments, deeds, judgments, etc. (with complete recording or filing information), here, or attach copies of the recorded or filed documents.
51. Insert the day the search was completed.
52. Insert the month the search was completed.
53. Insert the year the search was completed.
54. Insert the time, including the hour, minute, and second, that the search was completed. The certification must cover the recording of the mortgage to be guaranteed.
55. Insert the name of the county.
56. Insert the Participating Abstractor's Title Guaranty Number, name, and address.
57. Sign the Division Form 901. The form must be signed by the Participating Abstractor.
58. Disclose all clearance filings or recordings entered after the certification date in the Addendum, if applicable, or attach complete copies of all filings or recordings in lieu of complete information.

**Title Guaranty  
Report of Title – Post Closing Search  
Division Form 901**

TO: \_\_\_\_\_<sup>42</sup>\_\_\_\_\_ (Name and Address)

We furnish the following information of record in \_\_\_\_\_<sup>43</sup>\_\_\_\_\_ County,

Iowa:

Abstract No. or Reference No.: \_\_\_\_\_<sup>44</sup>\_\_\_\_\_, Loan No. \_\_\_\_\_<sup>45</sup>\_\_\_\_\_

Previous Report of Title Date and Time:

\_\_\_\_\_<sup>46</sup>\_\_\_\_\_

Legal Description: <sup>47</sup>

Property Address: <sup>48</sup>

Last recorded Deed conveys the hereinafter described real estate to:

Name of Titleholder(S) <sup>49</sup>

We also furnish the following new information of record since our previous report:

Taxes, Affidavits, Judgments, Satisfactions, Releases, Mortgages, Assignments, Deeds, Etc: <sup>50</sup>

This report is given solely for the purpose of issuance of a Lender Certificate by the Title Guaranty Division, 2015 Grand Avenue, Des Moines, IA 50312, on above mortgagee's loan and is not intended to be used for sale or transfer. No liability for errors or omissions will accrue to the benefit of any other person, firm or corporation. No report is made of instruments or proceedings not within the listed categories. Judgment and lien search has been made against all parties within the search pursuant to Title Guaranty requirements. This report is not a guaranty of title, or a statement as to the legality of sufficiency of any instrument or proceeding inspected in the search of the above real estate.

Search ending on \_\_\_\_51\_\_\_\_ day of \_\_\_\_52\_\_\_\_, 20\_53\_ at \_\_\_\_ 54\_\_\_\_

A.M./P.M., \_\_\_\_55\_\_\_\_ County, Iowa.

TGD # \_\_\_\_56\_\_\_\_

Abstractor Name

Address

By \_\_\_\_57\_\_\_\_  
(Authorized Signature)

Addendum: All Affidavits, Releases, Satisfactions, or Other Clearance Documents Filed or Recorded After Certification: 58

DIVISION FORM 901 PRINT 01/2006

## **Frequently Asked Questions When Preparing Division Forms 900 and 901**

**Question 1:** Does the Participating Abstractor have to utilize the actual Division Forms 900 and 901?

**Answer:** Yes. Division Forms 900 and 901 are the Division Board-approved forms for the Non-Purchase Product. The Participating Abstractor may reproduce the Forms without any alterations or deletions, but may include additional information requested by applicants.

**Question 2:** Can I skip using the Division Form 901 or replace the Division Form 901 with another search?

**Answer:** Division Form 901 may not be replaced with another form. If a Field Issuer is authorized and issues a Closing Protection Letter for a transaction, the Division Form 901 may be avoided for that transaction.

**Question 3:** Can I send Division Forms 900 and 901, without the attorney title opinions, to the Division or a Participating Abstractor for issuance of the Non-Purchase Product?

**Answer:** No. Code of Iowa section 16.91(6) requires for Title Guaranty "... a title opinion issued by a Participating Attorney in the form approved in the rules stating the attorney's opinion as to the title."

**Question 4:** What properties may be searched using Division Forms 900 and 901?

**Answer:** The 265 IAC 9.3 definition of the Non-Purchase Product states that the product is to be used only for a "residential property" and further defines a "residential property" as "... residential real estate consisting of single-family housing or multiple family housing of no more than six units." Any property which would include any other use, such as a building with seven or more residential units, business, agricultural, or industrial, would not qualify. Any property with a mixed use, i.e., residential and crop land, residential and business, would not qualify.

**Question 5:** Will the Non-Purchase Product work on rural or metes and bounds property?

**Answer:** Yes. There is no requirement that the property be subdivided, or be located in a town or city.

**Question 6:** Should there be one, two, or more deeds shown on Division Form 900?

**Answer:** There may be only one deed if the last deed is a borrower full value deed. If not, then the "Borrower Full Value Deed" information will be completed along with the subsequent deeds (for example, deed adding or removing spouse from title, deed pursuant to dissolution of marriage). Therefore, there may be one, two, or more deeds.

**Question 7:** Does the "borrower full value deed" have to have the same legal description as the legal description contained in the refinanced or second mortgage?

**Answer:** Yes. If the legal descriptions cannot be easily determined to be one and the same property, then the Participating Abstractor will have to provide more detailed abstracting. More property than the property in question may need to be searched. The complete plat of subdivision procedure may need to be abstracted. When more complicated abstracting is involved, the Participating Abstractor should feel free to require the current abstract, that already contains this information, be updated. If an abstract was never prepared at the time of purchase, and detailed abstracting is needed, an abstract should be prepared. Remember: The Non-Purchase Product was intended for simple and uncomplicated properties.

**Question 8:** Can the Participating Abstractor come forward from a new plat of subdivision?

**Answer:** Yes, if the Participating Abstractor discloses that the plat of subdivision complies with

Iowa Land Title Standard 1.5 as follows:

1. *The plat was recorded more than ten years earlier;*
2. *the plat has not been vacated;*
3. *the lots or a subdivision of the lots have been sold and conveyed; and*
4. *for plats filed prior to July 1, 1982, no claim was filed prior to July 1, 1992 as provided for in Iowa Code Section 592.3.*

*Authority: Iowa Code section 592.3 (2005).*

*COMMENT: Iowa Code section 592.3 does not apply to auditor's plats, plats of survey or acquisition plats. Iowa Code section 592.3 has not been updated as the platting requirements have changed.*

**Question 9:** What happens when the last deed is more than 10 years old but not a “full value deed”?

**Answer:** If a tax, guardian's, executor's, administrator's, receiver's, referee's assignee's, or sheriff's deed has been recorded in the applicable county recorder's office for more than 10 years, and no action against said deed is found (refer to Iowa Code section 614.22), then the deed may be relied upon as the “root” for the search. If upon examination, the Participating Attorney has an objection, the Participating Abstractor must search further back.

**Question 10:** Does the \$90.00 refinance premium apply when Division Forms 900 and 901 are utilized?

**Answer:** Yes. The \$90.00 premium applies whenever the mortgage is a Non-Purchase Product. The \$90.00 rate is also available when traditional abstracting is used.

**Question 11:** Can Division Form 900 be used when one of the spouses in title has died?

**Answer:** Yes. If the spouses were joint tenants with full rights of survivorship and not as tenants in common, the Affidavit of Surviving Spouse For Change of Title to Real Estate (ISBA Official Form No. 177) should be attached or fully disclosed in the search. Refer to Iowa Land Title Standard 9.9 regarding estate tax liens. If the spouses are tenants in common, the Participating Attorney and Participating Abstractor have the discretion to determine whether updating the abstract would be more appropriate.

**Question 12:** Can Division Form 900 be used when a spouse has been removed from title due to dissolution of marriage?

**Answer:** Yes. The dissolution proceeding should be fully disclosed in Division Form 900.

**Question 13:** Will the Non-Purchase Product work on a rental property?

**Answer:** Yes, if the property meets the definition of “Residential property” under 265 IAC 9.3:

*...real estate consisting of single family housing or multifamily housing of no more than six units.*

**Question 14:** Will the Non-Purchase Product work on a refinance of an installment purchase contract?

**Answer:** Yes, but remember that the Form 900 must commence with the filing of a deed for value (not including an installment purchase contract); therefore, the vendor's full value deed must be the commencement deed.

## ***Section 8.02 Rapid Certificate Program***

The Rapid Certificate Program is only available for Participating Attorneys, Participating Abstractors, and Independent Closers, specifically authorized by the Division to issue Certificates, hereinafter referred to as “Field Issuers.” The purpose of the Rapid Certificate Program is to allow Field Issuers to issue Certificates in a timely manner, before a paid lien is released and satisfied. There are two procedures for the Rapid Certificate Program: one for prior unreleased mortgages, and one for all other liens. To make sure the public records are kept clear of unreleased mortgages, the Mortgage Release Certificate Program is used in conjunction with the Rapid Certificate Program.

### **For Prior Unreleased Mortgages**

1. A Field Issuer may issue a Certificate guaranteeing over a prior mortgage that has not yet been released of record, if all of the following conditions are satisfied:
  - a. The mortgage to be released was given to secure a loan in the original principal amount, including any future advances, equal to or less than:
    - i) For mortgages paid off by a Division Closer within a Division closing, \$20,000,000.
    - ii) For all other mortgages, without prior Division written approval, \$1,000,000.
  - b. The Field Issuer has available for review:
    - i) A “Payoff Statement” showing the unpaid balance of the loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, the amount required to be paid, interest on a per-day basis, and the address where payment is to be sent or other specific instructions for making a payment. If the payoff statement is for a partial release of mortgage, it must include the legal description of the property that will be released from the mortgage.
    - ii) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer or other documentary evidence satisfactory to the Division of payment to the mortgagee or mortgage servicer. Wiring instructions and a receipt of wire transmittal for payments made by wire is also acceptable.
  - c. The final Certificate is based on a post-closing abstract certification, post-closing search certification, or Form 901. If the Certificate is covered by a Closing Protection Letter, it is left to the discretion of the Field Issuer to determine how to verify document recording information.
2. The Field Issuer shall make an exception on Schedule B stating the pertinent information about the unreleased prior mortgage, and attach an Endorsement Against Loss-Lien to the Certificate specifically noting on the Endorsement the paragraph number of Schedule B where the exception was made for the prior mortgage.
3. The Field Issuer should submit to the Division, within four months of the closing of the guaranteed mortgage, or recording of the conveyance if a sale transaction, the completed Division Form 801, “Showing of Release/Satisfaction,” stating that the public records now show the prior mortgage released of record.
4. If the release is not recorded within four months after the closing, the Participant shall apply to the Division for release of mortgage, as provided for in Iowa Code section 16.92 (2007) and 265 IAC 9.20. Independent Closers shall immediately notify the Division if a release is not recorded within four months after the closing of the guaranteed mortgage and assist the Division in procuring a release of mortgage.

### **For All Other Liens**

1. A Field Issuer may issue a Certificate guaranteeing over a lien (not a mortgage lien) that has not yet been released of record, if all of the following conditions are satisfied:
  - a. The amount of the lien is \$500,000.00 or less, unless special permission is obtained in writing from the Division underwriting department.
  - b. The Field Issuer must have in his/her physical possession written documentation evidencing the payoff amount of the lien and proof that the lien was paid off, i.e., a cancelled check or a wire receipt.
  - c. The final Certificate is based on a post-closing abstract certification, post-closing search certification, or Form 901. If the Certificate is covered by a Closing Protection Letter, it is left to the discretion of the Field Issuer to determine how to verify document recording information.
2. The Field Issuer shall make an exception on Schedule B stating the pertinent information about the unreleased lien, and attach an Endorsement Against Loss-Lien to the Certificate specifically noting on the Endorsement the paragraph number of Schedule B where the exception was made for said lien.
3. The Field Issuer should provide to the Division, within four months of the closing of the guaranteed mortgage, or recording of the conveyance if a sale transaction, the completed Division Form 801, "Showing of Release/Satisfaction," stating that the public records now show the prior lien released and satisfied of record.
4. The Field Issuer shall use his/her best efforts to ensure that the lien is promptly released and satisfied of record.

### **Field Issuer Cooperation**

The Participant shall at all times cooperate with and assist the Division's staff, or its designee, concerning the administration of the Rapid Certificate Program, or the Director of the Division, at his/her sole discretion, may revoke said Field Issuer's privilege to issue Certificates under the Rapid Certificate Program.

Violation of the procedures and requirements of the Rapid Certificate Program by the Field Issuer shall be considered, at a minimum, a violation of Iowa Code section 16.91 (2007) and the rules promulgated thereunder, and a breach of his/her Participation Agreement or Independent Closer Agreement.

**Showing of Release/Satisfaction – Rapid Certificate Program  
Division Form 801**

Certificate No.: - \_\_\_\_\_

I, \_\_\_\_\_, with Title Guaranty Member Number \_\_\_\_\_, state that the public records now show the following lien effectively released/satisfied of record according to Iowa law and title standards:

Creditor Name(s): \_\_\_\_\_

Debtor Name: \_\_\_\_\_

Date of Lien: \_\_\_\_\_

Filing Date of Lien: \_\_\_\_\_

Record Information: \_\_\_\_\_

By release/satisfaction with the following information:

Grantor Name: \_\_\_\_\_

Dated: \_\_\_\_\_

Filing Date: \_\_\_\_\_

Record Information: \_\_\_\_\_

\_\_\_\_\_  
(SIGNATURE OF FIELD ISSUER)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
(TYPED NAME OF FIELD ISSUER)

\_\_\_\_\_  
(TYPED TGD MEMBER NUMBER)

DIVISION FORM: 801  
FILE NO.:

REVISED 10.07.2008

### ***Section 8.03 Closing Protection Letter***

Pursuant to Iowa Code section 16.93 and 265 IAC 9.22, the Division may issue Closing Protection Letters to persons to whom a Division Commitment and Certificate is to be issued. The letters may indemnify lenders and owners against loss of settlement funds caused by a Division Closer's theft of settlement funds and failure to comply with written closing instructions. Division Closers are required to complete the required Division forms. Division Participants and Independent Closers are eligible, at the sole discretion of the Division, to be granted Division Closer status.

#### **Requirements for Division Closers**

To qualify as a Division Closer, an Applicant must meet the following requirements:

1. Participants who apply must be in good standing with the Division.
2. Applicant shall constantly keep in force errors and omissions insurance in the amount of \$500,000.00 per claim and a \$1,000,000.00 aggregate annual limit. The policy shall be endorsed to include "Title Guaranty Division" as a certificate holder and must contain provisions such that the Division is immediately notified by the insurance carrier of any lapse in or termination of coverage. Independent Closers may additionally be required to maintain a surety and/or fidelity bond in an amount as deemed necessary by the Division.
3. Independent Closer applicants, including partners, officers, members, and employees, must consent to credit and criminal background investigations deemed necessary by the Division. The Independent Closer must fully cooperate with the Division to obtain consents and waivers as required to conduct such investigations. The Division maintains the right to conduct these investigations at its discretion.
4. Applicant must complete the Division Closer Application and be approved to issue Closing Protection Letters. Contact the Division for a copy of the application.
5. All requested information shall be provided with the application form. The Division may consider an application withdrawn if it does not contain all of the information required and the information is not submitted to the Division within 30 days after the Division requests the information. The application shall be accompanied by a fee to be set by the Division Board. The Division Director shall approve or deny the application within 90 days.
6. Applicant must attend one or more Division training sessions, as required by the Division.
7. Applicant, upon approval by the Division, must execute a Closing Protection Letter Indemnity Agreement in favor of the Division. See the form contained herein.

#### **Division Escrow Accounts**

Division Closers conducting Division Closings utilizing accounts through the interest on lawyers' trust account program (hereinafter referred to as "IOLTA") regulated by the Lawyer Trust Account Commission shall be subject to the Iowa Supreme Court's rules and regulations concerning the operation of trust accounts. The remainder of this discussion shall not apply to Division Closers utilizing IOLTA accounts for Division Closings.

When Division Closers receive and disburse proceeds for Division Closings using non-IOLTA accounts, a Division Escrow Account is used to make disbursements for closings for which the Division Closer is closing under protection of a Division Closing Protection Letter. When a closing takes place and money is deposited with a Division Closer to fund the transaction, payment of the proceeds to the seller, loan payoffs, recording fees, closing fees, Division

premiums, and other related charges are to be paid from the account.

### ***1. Establishing a Division Escrow Account***

Division Closers who operate non-IOLTA escrow accounts shall provide an Irrevocable Letter of Direction to Financial Institution addressed to the financial institution where the account is located. See the form contained herein. This letter will be directed to the financial institution at which the account is established, authorizing the bank to send the Division monthly bank statements and copies of any relevant account information, as solely determined by the Division. The Division may, for cause, terminate or suspend a Division Closer's authority to maintain the account at any time.

When a Division Escrow Account is established, the Division Closer must report the account number, the bank name and address, and the Division Closer's name and number to the Division. The Division Closer is responsible for the proper conduct, maintenance, and reconciliation of the account. Periodic audits and reconciliation of bank accounts will be conducted by the Division.

Disbursements may be made out of a Division Escrow Account only if deposits in amounts at least equal to the disbursement have first been made directly relating to the transaction disbursed against and if the deposits are in one of the following forms:

- a. Cash. The Division discourages dealing with cash. When a party to a real estate transaction deposits cash, the Division Closer must prepare a receipt, a copy of which is to remain with the file, containing the following information:
  - i) The name of the Division Closer's office.
  - ii) Their Division Member Number.
  - iii) The date and time the cash was received.
  - iv) The amount of money received.
  - v) The name, address, and telephone number of the person who paid the money.
- b. Wire transfers such that the funds are unconditionally received by the Division Closer's depository;
- c. Checks, drafts, negotiable orders of withdrawal, money orders, and any other item that has been finally paid before any disbursement;
- d. A depository check, including a certified check, governed by the provisions of the Federal Expedited Funds Availability Act, 12 USC Sec. 4001, et seq.; or
- e. Credit transfers through the Automated Clearing House (ACH) which have been deemed available by the depository institution receiving the credits. The credits must conform to the operating rules set forth by the National Clearing House Association (NACHA).

### ***2. Division Escrow Account Expenses***

In addition to the money collected to fund a Division Closing, the only money that should be deposited in the account is money intended to cover check charges or bank fees. Personal use of the Escrow Account is strictly forbidden. All activity, including bank service charges and check charges, must be recorded in the Division Closer's records of the account.

### ***3. Reconciliation***

- a. Monthly reconciliation of the Division Escrow Account is mandatory. Each month, the account must be reconciled with the bank statement. A Division Closer must immediately notify the Division on becoming aware of any problem with the account.
- b. Failure to maintain monthly reconciliations will result in loss of privilege to conduct Division Closings.

#### ***4. Escrow Funds and Title Indemnities***

There are several reasons why funds are held in escrow after a closing. Completion of work, payment of taxes, and title indemnities are just a few of the reasons. Whenever funds are held in escrow after a closing, there must be a written escrow agreement detailing the reason the funds were held, the time period during which the funds are to be held, and the parties necessary to authorize disbursement of the funds. The Division has standard form agreements for most situations, and Division attorneys will be available to assist in drafting an agreement for any escrow involving special circumstances.

#### ***5. Recordkeeping Requirements***

The records of a Division Escrow Account must be kept up to date at all times, so that they may be inspected by the Division. The Division reserves the right to audit this account at any time, and can be expected to do so under any of the following circumstances:

- a. If a check is returned for non-sufficient funds (NSF).
- b. When a Division Closer terminates his/her relationship with the Division.
- c. Whenever a Division Closer has not followed Division procedures.

Upon request, Division Closers must immediately submit account information, bank statements, receipts, checks, and other information upon request of the Division for review.

All records relating to this account must be kept for 10 years beyond the current year.

### **Procedures**

#### ***1. Commitments***

- a. A Commitment must be issued prior to a Division Closing.
- b. The Gap Endorsement must be issued for all Commitments. Refer to prior section 5.15, "Gap Coverage Endorsement Instructions," for the procedure.
- c. The effective date on an unexpired Commitment may be updated at closing with a Pre-Closing Search Certification.

#### ***2. Closing Procedures***

- a. The Division Closer must use the Rapid Certificate Program.
- b. Division Closers must maintain detailed records of the parties present at each closing, and specify of where and when each closing is held.
- c. The Field Issuer who issued the Commitment and Gap Endorsement must issue the final Certificate(s).

#### ***3. Lender Certificates***

Division Closers must ensure that Lender Certificates are issued within 30 days after closing, unless the lender specifies a shorter time period, even though the abstract is not yet certified through the recording of the mortgage to be guaranteed, and releases and other curative documents are not yet filed of record. In order to comply with this requirement, Division Closers must use the Rapid Certificate Program to guarantee over newly paid mortgages or liens not yet released of record. The Division encourages updated abstract certification, post-closing search certification, or Form 901 (if applicable). However, it shall be up to the Field Issuer to determine whether abstracting, a lien search, or some other search method is performed to assure the deed, mortgage, and other curative documents have in fact been filed of record. If the Division Closer is not responsible for issuing the Title Guaranty Commitment and/or Certificate, the Division

Closer shall cooperate with the issuing attorney, abstractor, or Division staff to ensure that a Certificate is timely issued. Independent Closers not responsible for issuing the Commitment or Certificate shall immediately contact the Division if a Certificate is not issued within 30 days.

#### ***4. Owner Certificates***

Owner Certificates may be issued in the same manner as Lender Certificates described above. Owner Certificates may be issued from a purchase transaction and cannot be ordered in a refinance transaction.

#### ***5. Incorrect Certificates and Endorsements***

A Certificate is considered to be issued when it is properly completed and delivered to the Guarantees with all Endorsements specifically required in the closing instructions, escrow agreement, or other documents.

### **Conflicts of Interest**

A Division Closer shall not issue or cause to be issued a Division Commitment or Certificate nor close a transaction in which the Division Closer has a direct or indirect interest unless the Division provides written approval to do so.

A Division Closer who issues or causes to be issued a Division Commitment or Certificate and closes on land in which the Division Closer has a direct or indirect interest without first obtaining the approval of the Division shall, in addition to other rights and remedies of the Division, be liable to the Division for any loss or damage suffered by the Division under the Commitment or Certificate. In addition, the Division shall not be liable under the Commitment or Certificate to the Division Closer or anyone who succeeds to the Division Closer's interest in the land, including but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors. An "indirect interest" for purposes of this discussion includes, but is not limited to, an interest held by the Division Closer in a trust, estate, partnership, or corporation, and any interest held by the Division Closer's spouse, children, grandchildren, or parents in the land or in a trust, estate, partnership, or corporation. These requirements shall not apply to interests held by the Division Closer or his or her spouse, children, grandchildren, or parents in a representative capacity or in a publicly held corporation.

### **Audit Procedures**

#### ***1. Office Audits***

The Division may, with or without notice to a Division Closer, audit the Division Closer at the Division Closer's office. This audit may include, but need not be limited to, review of the Division Closer's escrow account records, preliminary and final opinions, Commitment and Certificate issuance (when applicable), and copies of updated abstracts; audit of serialized forms; and verification of the Division Closer's compliance with Division rules and regulations, and any other instructions given by the Division.

#### ***2. Division Escrow Account Audits***

- a. The Division may, with or without notice to a Division Closer, audit the Division Closer's escrow account. This provision shall not apply to Division Closers utilizing accounts regulated by the Lawyer Trust Account Commission.
- b. The Division may require an Independent Closer, at the Independent Closer's expense, to have an annual independent audit made of its escrow, settlement, closing and security deposit accounts, conducted by a certified public accountant approved by the Division, on a calendar year basis within ninety (90) days after the close of the previous calendar year.

The Independent Closer shall provide a copy of the audit report to the Division within one hundred (100) days after the close of the previous calendar year. The Division may promulgate additional requirements setting forth the minimum threshold level at which an audit would be required, the standard of the audit, and the form of the audit report required.

### **3. Remedies**

In addition to other rights and remedies of the Division, the remedies set forth in the claims section of the Division administrative rules shall apply to a Division Closer's violation.

## **Closing Procedures**

### **1. Underwriting Determinations**

The Division Closer will cooperate with all involved Participants and the Division staff to make underwriting determinations prior to or at closing. For purposes of this discussion, the term "underwriting determinations" includes, but is not limited to, guaranteeing public access; reviewing gap searches, possible judgments, survey matters (including encroachments), unreleased mortgages, or other liens; and resolving any other matters disclosed by the Commitment or other sources of title information. A Division Closer or Participant who causes or allows an erroneous underwriting determination to be made shall be liable to the Division for loss or damage that the Division may suffer as a result of the erroneous underwriting determination. A Division Closer or Participating Attorney shall make all underwriting determinations utilizing the following when issuing Division Commitments and Certificates:

- a. Applicable state and federal laws;
- b. Generally accepted and prudent title examination methods, such as the most recent edition of the Iowa Land Title Standards of the Iowa State Bar Association; and
- c. Procedures implemented by the Division and outlines in the various manuals and other materials provided by the Division.

Any underwriting determination about which there may be a bona fide difference of opinion among local attorneys and that is not specifically covered by manuals and materials provided by the Division shall be approved by Division legal staff.

### **2. Title Documentation**

A Division Closer shall make arrangements to obtain all applicable title documentation, including but not limited to the following documents:

- a. CMAs (properly executed by all sellers and buyers, or by current titleholders);
- b. Name affidavits;
- c. Documents to be recorded; and
- d. Current payoff letters and corresponding payoff checks.

The Division Closer shall be liable to the Division for additional interest or late penalties or other loss or damage suffered by the Division resulting from the Division Closer's failure to obtain and competently act upon these documents in a timely manner.

### **3. Forms**

A Division Closer may not alter any form supplied by the Division, or use a form supplied by another person or entity to bind the Division, or otherwise bind the Division to liability with a form, other writing, or representation not supplied or authorized by the Division.

#### **4. *Post-Closing***

- a. Division Closers shall follow up and see that valid releases and satisfactions are filed for all liens paid at Division Closings, in accordance with the Rapid Certificate Program. See section 8.02 of this Article. The Division will pay the mortgage release filing fee when the Rapid Certificate Program is used by Division Closers. The Independent Closer shall immediately notify the Division if a release of mortgage or lien is not recorded within four months after the closing of the guaranteed mortgage or sale transaction and assist the Division in procuring a release of mortgage or lien.
- b. Division Closers shall take remedial action on any title defects discovered after the closing and obtain any curative documents necessary to clear title. Division Closers shall promptly respond to and assist the Division in clearing title defects.

#### **5. *Premiums***

Division Closers must submit premium payments to the Division within 30 days of closing.

#### **Renewal of Division Closer Status**

The Division shall send out annual Renewal Applications to each Division Closer to confirm qualifying status. If the Renewal Application is not returned within the allowed time period, the Division Closer designation may be immediately terminated.

#### **Forms**

The Division Closer Application – Independent Closer, the Closing Protection Letter, the Closing Protection Letter Indemnity Agreement, and the Irrevocable Letter of Direction to Financial Institution are shown on the following pages.



## Division Closer Application – Independent Closer

Applicant Name:

\_\_\_\_\_

Taxpayer Identification No. \_\_\_\_\_ Type of Entity: \_\_\_\_\_

Address:

\_\_\_\_\_

Who in your office will conduct Division Closings? \_\_\_\_\_

\_\_\_\_\_

Bank account used to receive and disburse proceeds for Division Closings:

Financial Institution Name: \_\_\_\_\_

Address: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Account Name: \_\_\_\_\_ Authorized Signors: \_\_\_\_\_

Account Number: \_\_\_\_\_

Note: You must execute an Irrevocable Letter of Direction to the financial institution where the account is located.

Describe in detail real estate transaction experience, including number of closings conducted per year:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Attach two (2) letters of reference from lenders who can attest to your ability to close a real estate transaction.

\_\_\_\_\_ Attach two (2) letters of reference from Iowa licensed attorneys who have personal knowledge of your professional qualifications.

\_\_\_\_\_ Attach professional liability insurance policy, including declarations page and copy of application for the policy.

Are you or a key employee presently a defendant in any court proceedings?\_\_\_\_\_ Have you or a key employee ever had a civil or criminal judgment or conviction against you, not including minor traffic violations?\_\_\_\_\_ Have you or a key employee had a bankruptcy proceeding against you or your business within last 7 years?\_\_\_\_\_ If yes to any of the above questions, please attach a detailed explanation including case number, court in which the case was filed, circumstances, and disposition.

The Division reserves the right to request additional information prior to approving this Application, including consents to conduct criminal background and credit investigations. The Division may also request letters of reference from lenders, attorneys, and abstractors familiar with your real estate experience.

Approval of this application may also be contingent upon the completion of division training session(s).

DATE:\_\_\_\_\_ SIGNATURE\_\_\_\_\_

Return to:  
Title Guaranty  
ATTN: Becky Petersen  
2015 Grand Ave.  
Des Moines, IA 50312  
Fax 1-515-725-4901

Date:

Lender's Name

Street Address:

City/State:

Legal Description of Property:

**Commitment No.:**

Closing Protection Letter related to Division Closer \_\_\_\_\_ (name and member number).

When a Commitment and Certificate of the Title Guaranty Division of the Iowa Finance Authority (the Division) is specified for your protection in connection with closing the Iowa real estate transaction specified above, in which you are to be the: (a) lessee of an interest in land, (b) purchaser of an interest in land, or (c) lender secured by a mortgage (including any other security instrument) of an interest in land, its assignees or a warehouse lender, the Division, subject to the conditions, exclusions and limitations set forth below, hereby agrees to reimburse you for actual loss incurred by you in connection with the closing when conducted by a Division Closer and when such loss arises out of:

1. Failure of the Division Closer to comply with your written closing instructions to the extent that they relate to (a) the status of the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land, including the obtaining of documents and the disbursements of funds necessary to establish such status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain such other document affects the status of the title to said interest in land or the validity, enforceability and priority of the lien of said mortgage on said interest in land, or
2. Fraud, dishonesty, or negligence of the Division Closer in handling your funds or documents in connection with such closings to the extent such fraud, dishonesty, or negligence relates to the status of the title to said interest in land or to the validity, enforceability, and priority of the lien of said mortgage on said interest in land.

If you are a lender protected under the foregoing paragraph, your borrower, your assignee, and your warehouse lender in connection with a loan secured by a mortgage shall be protected as if this letter were addressed to them, provided, however, your borrower is only protected if they receive a Division Owner's Certificate in connection with the real estate transaction specified above.

**Conditions and Exclusions.**

1. The Division issues Commitments and Certificates pursuant to Iowa Code Section 16.91 and nothing in this Closing Protection Letter or your written closing instructions or oral closing instructions shall create any liability or requirement for the Division or a Division Closer as regards title coverage outside of the authority provided in Iowa Code Section 16.91, 16.93 and the rules promulgated there under.
2. The Division will not be liable to you for loss arising out of:

- A. Failure of the Division Closer to comply with your closing instructions which require Title Guaranty protection inconsistent with that set forth in the Commitment issued by the Division. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in said Commitment shall not be deemed to be inconsistent.
  - B. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except such as shall result from failure of the Division Closer to comply with your written closing instructions to deposit the funds in a bank which you designate by name.
  - C. Mechanic's and materialmen's liens in connection with your purchase or lease or construction loan transactions, except to the extent that protection against such liens is afforded by a Division Commitment or Certificate.
  - D. Failure of the Division Closer to comply with your written closing instructions to the extent such instructions require a determination by the Division Closer of the validity, enforceability or effectiveness of any document contemplated under paragraph 1(b) above.
  - E. Fraud, dishonesty, or negligence of your employee, agent, attorney, or broker.
  - F. Your settlement or release of any claim without the written consent of the Division.
  - G. Any matters created, suffered, assumed, or agreed to by you or known to you.
- 3. A Division Commitment must have been received by you prior to the transmission of your final closing instructions to the Division Closer.
  - 4. When the Division shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the Division for such reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of such right of subrogation.
  - 5. Any liability of the Division for loss incurred by you in connection with closings of real estate transactions by a Division Closer shall be limited to the protection provided by this letter. However, this letter shall not affect the protection afforded by a Division

Commitment or Certificate.

6. Claims shall be made promptly in writing to the Title Guaranty Division at its principal office at 2015 Grand Avenue, Des Moines, IA, 50312. When the failure to give prompt notice shall prejudice the Division, then liability of the Division hereunder shall be reduced to the extent of such prejudice.
7. The protection herein offered extends only to the above-referenced real property transaction as presented in the Division Commitment. This Closing Protection Letter does not provide any other coverage to indemnify against improper acts or omissions with regard to escrow, settlement, or closing services.
8. The total amount of coverage shall not exceed the amount of the Commitment or Title Guaranty to be issued. Liability under the Closing Protection Letter shall be coextensive with liability under the Certificate to be issued in connection with a transaction such that payments under the terms of the Closing Protection Letter shall reduce the same amount the liability under the Title Guaranty Certificate and payment under the Title Guaranty Certificate shall reduce the liability under the terms of this Closing Protection Letter.

The protection offered herein will continue until canceled by written notice from the Division. The scope and effect of this letter is limited to a single transaction which is the closing on the Commitment referenced in the caption. Any previously issued Closing Protection Letter is hereby canceled.

Title Guaranty Division

By:\_\_\_\_\_

Loyd Ogle, Director



## **Closing Protection Letter Indemnity Agreement**

This Agreement is made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (DIVISION CLOSER) (“Indemnitor”) and the Title Guaranty Division (“Division”) for all acts and omissions by Indemnitor.

The Division may agree to issue Closing Protection Letters to lenders at the request of the Indemnitor;

The Division has agreed to assume liability under Closing Protection Letters at the request of Indemnitor, but only on the express condition that Indemnitor execute this Indemnity Agreement, and in reliance on the express warranty of Indemnitor that Indemnitor has such a material interest in the issuance of the Closing Protection Letters as to empower Indemnitor to enter into and be bound by this Indemnity Agreement.

The parties agree as follows:

1. Indemnification by Indemnitor. Indemnitor shall indemnify the Division against any and all liability, loss, damage, or expense of any kind whatsoever that the Division may suffer in consequence of claims under the Closing Protection Letters or any renewal thereof or substitute therefore and in connection with the enforcement of this Indemnity Agreement, including but not limited to, all attorneys’ fees, collection fees, investigation fees, court costs, and all other costs and expenses, whether direct or indirect, incurred in the payment, compromise, attempted compromise, trial, appeal, or arbitration of claims arising under the Closing Protection Letters, incurred in attempts to recover losses sustained on claims arising under the Closing Protection Letters or incurred in the enforcement of this Indemnity Agreement.

The indemnity provided for herein applies only to Closing Protection Letters wherein Indemnitor is the designated division closer.

2. Payment of Claims and Defense of Actions. It shall be the sole right and responsibility of the Division to determine in good faith whether claims on which the Division may be or become liable under the Closing Protection Letters shall be paid, compromised, defended, tried, appealed, or arbitrated, and the amount, if any, to be paid. The Indemnitor is under no obligation to defend any actions or proceedings brought against the Division in connection with the subject matter of this Agreement; provided, however, that nothing contained herein shall be so construed as to relieve Indemnitor of any liability otherwise imposed by this Indemnity Agreement or by law with respect to costs and expenses incurred by the Division in good faith in connection with such actions or proceedings.

3. Reimbursement By Indemnitor. Indemnitor shall pay to the Division all sums due under this Indemnity Agreement within thirty (30) days after demand therefore is made by the Division. A demand under the preceding sentence shall be made in writing and served upon the Indemnitor either (a) personally, or (b) by sending the demand by United States first class mail, postage prepaid to the Indemnitor at (insert address) in which event the demand shall be deemed to have been served at the time it was mailed.

4. Severability. If any clause, phrase, provision, or portion of this Indemnity Agreement or the application thereof to any person or circumstances shall be invalid, or unenforceable under applicable law, such event shall not affect, impair, or render invalid or unenforceable the remainder of this Indemnity Agreement.

5. Miscellaneous.

(a) The Division may make or consent to any amendment to the Closing Protection Letters, including, but not limited to, the issuance of a substitute therefore, or renewal thereof.

(b) This indemnity Agreement shall in no event be so construed as to require the

Updated 2/10/2009

Division to issue any Closing Protection Letter, nor any substitution, renewal, or alterations thereof, nor shall it be so construed as to deprive the Division of the right to withdraw any previously issued Closing Protection Letter at any time.

(c) Nothing herein shall be so construed as to require the Division to exhaust any remedies it may have against any other party as a pre-condition to making a demand under or bringing suit on this Indemnity Agreement.

(d) Section or paragraph headings are inserted herein only for convenience or reference and shall not be considered in the construction of any provision hereof.

6. Binding Effect. The terms of this Indemnity Agreement shall bind and inure to the benefit of the parties and their heirs, legal representatives, successors, and assigns.

TITLE GUARANTY DIVISION  
A DIVISION OF THE IOWA FINANCE AUTHORITY

BY: \_\_\_\_\_(Title Guaranty Director)

BY: \_\_\_\_\_  
AUTHORIZED SIGNATURE FOR PARTICIPATING  
ATTORNEY/ABTRACTOR/INDEPENDENT CLOSER

Subscribed and sworn to before me, a Notary Public in and for said County and State, this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

\_\_\_\_\_  
Notary Public



## IRREVOCABLE LETTER OF DIRECTION TO FINANCIAL INSTITUTION

To: \_\_\_\_\_  
(Financial institution where Division Escrow Account is held)

From: \_\_\_\_\_  
(Division Closer / account holder {Print name exactly as it appears on account})

Date: \_\_\_\_\_

Re: Authorization to allow the Title Guaranty Division to access and be Provided  
Information Regarding Account Number \_\_\_\_\_

I/We, the undersigned account holder(s) do hereby authorize and direct  
\_\_\_\_\_ (Financial Institution) to release any and all information  
pertaining to account # \_\_\_\_\_ to the Title Guaranty Division (Division) any time the  
Division provides written request therefore.

\_\_\_\_\_ (Financial Institution) is also directed to send notice to  
the Division immediately if this account is closed or if the account becomes overdrawn. Notice  
should be sent to: Title Guaranty Division, 2015 Grand Avenue, Des Moines, IA 50312.

\* \_\_\_\_\_

\* \_\_\_\_\_

\* \_\_\_\_\_

\* \_\_\_\_\_

\* Must be signed by all parties that are signatories on the account.  
This Letter of Direction cannot be cancelled or revoked.

## Article IX: Acronyms

A list of acronyms, abbreviations, and other shortened forms and what they stand for is provided below.

ACH.....	Automated Clearing House
All Purpose CMA .....	Composite Mortgage Affidavit for all purposes
ALTA .....	American Land Title Association
CAP.....	Certificate Application Processing
Certificates .....	Title Guaranty Certificates
CMA .....	Composite Mortgage Affidavit
Commitments.....	Title Guaranty Commitments
Division Form 900 .....	Title Guaranty Report of Title
Division Form 901 .....	Title Guaranty Report of Title – Post Closing Search
Division Form: PCS.....	Pre-Closing Search Certification
Field Issuer.....	Participating Abstractor, Participating Attorney, or Independent Closer
IAC.....	Iowa Administrative Code
IFA .....	Iowa Finance Authority
IOLTA.....	Interest on Lawyers' Trust Account
Manual .....	Title Guaranty Manual F/K/A Attorney Manual
NACHA .....	National Clearing House Association
NSF .....	Non-Sufficient Funds
Participant.....	Participating Abstractor or Participating Attorney
Primary Residence CMA .....	Composite Mortgage Affidavit for primary residences
Program.....	Title Guaranty Program
RPIR.....	Real Property Inspection Report
The Division.....	Title Guaranty Division